

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

74-1272

**United States Court of Appeals**

FOR THE SECOND CIRCUIT

JEFF SIMON, as Custodian for GAIL NINA SIMON, Under the  
New York Uniform Gifts to Minors Act, *Appellant,*

—against—

THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED, EDWIN W. MILLER, STERLING R. CHATFIELD, WILLIAM B. GUMBARD, LEON J. SIMKINS, MORTON H. SIMKINS, DOROTHY SIMKINS, LEON MELTZER, JACOB J. SIEGAL, and MALCOLM SANDERS, *Appellees.*

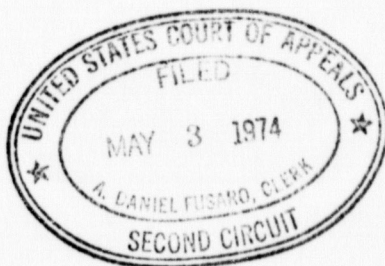
**On Appeal from the United States District Court  
for the District of Connecticut**

**APPENDIX**

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122 East 42nd Street,  
New York, New York 10017.  
(212) 697-9180

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KEEFE,  
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Post Office Box 1936,  
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New Haven, Connecticut 06509.

WIGGIN & DANA,  
*Attorneys for all other Appellees,*  
205 Church Street,  
New Haven, Connecticut 06509.



**PAGINATION AS IN ORIGINAL COPY**

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT  
NEW HAVEN, CONN.

-----X  
JEFF SIMON, as Custodian for GAIL NINA  
SIMON, under the New York Uniform Gifts  
to Minors Act,

Plaintiff,

Civil No. 10,425

-against-

NOTICE OF APPEAL

THE NEW HAVEN BOARD AND CARTON COMPANY,  
INC., et al,

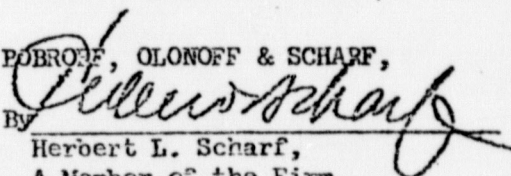
Defendants.  
-----X

Notice is hereby given that the above-named plaintiff,  
JEFF SIMON hereby appeals to the United States Court of Appeals for  
the Second Circuit from the final judgment filed and entered in this  
action on the 9th day of January, 1974 in favor of the defendants  
and ordering and adjudging that the above-entitled action be dismissed  
and dismissing it on the merits, with costs to the defendants.

Dated: January <sup>24</sup>~~21~~, 1974

POBRON, OLONOFF & SCHARF,

By

  
Herbert L. Scharf,  
A Member of the Firm,  
Office & P.O. Address:  
122 East 42nd Street,  
New York, N.Y. 10017

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT  
NEW HAVEN, CONN.

-----X  
JEFF SIMON, as Custodian for GAIL NINA  
SIMON, under the New York Uniform Gifts  
to Minors Act,

Plaintiff,

Civil No. 10,425

-against-

NOTICE OF APPEAL

THE NEW HAVEN BOARD AND CARTON COMPANY,  
INC., et al,

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- 1 -

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## CIVIL DOCKET

JURY DEMAND

10425

UNITED STATES DISTRICT COURT

APPENDIX A

Jury demand date:

C. Form No. 106 Rev.

TITLE OF CASE		ATTORNEYS			
THE SIMON, as Custodian for		For plaintiff:			
ALL NINA SIMON, under the New York		Emanuel A. Sachs			
Uniform Gifts to Minors Act		Sachs, Sachs, <del>Chase</del> & Sachs			
vs		207 Orange St.			
		New Haven, Conn.			
THE NEW HAVEN BOARD & CARTON COMPANY, INC.,		Of Counsel:			
LIEBOWITZ, DEIXEL & BRODESKY		Liebowitz, Deixel & Brodsky			
50 Broad St.		50 Broad St.			
New York 4, N.Y.		New York 4, N.Y.			
EDWIN W. MILLER,		Behroff, Olonoff & Scharf			
122 East 42nd St.		122 East 42nd St.			
New York, N.Y.		New York, N.Y.			
Withdrawn --)					
LEON J. SIMKINS, MORTON H. SIMKINS, DOROTHY		For defendant:			
SIMKINS, LEON MELTZER, JACOB J. SIEGAL,		William L. Falariner			
and MALCOLM SANDERS		Harry J. Wexler			
205 Church St.		Gumbart, Gashin, Tyler and Cooper			
New Haven, Conn.		205 Church St.			
		New Haven, Conn.			
		John D. Fassett - (For all*defendants			
		William J. Doyle named in 2nd Amend.			
		205 Church St. Verified Complaint			
		New Haven, Conn. except sanders)			
		Louis M. Winer (For: Wm. B. Gumbart)			
		Tyler, Cooper, Grant, Bowerman & Keele			
		205 Church Street, Box 1936			
		New Haven, Conn.			
STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DIB.
3. 5 mailed	Clerk	1/29	Sach, Sachs	15 00	
			Glaime & Sachs		
3. 6 mailed	Marshal	4/30	Deposit:		15 00
		"	G.F. 102411		
As of Action: Derivative	Docket fee	1974			
holders action after		1/23	Appeal	5 00	
of fiduciary duty	Witness fees		(Bobroff, Olonoff & Scharf)		
Police statements by	Depositions	1/29	Deposit:		5 00
Leon arose for requesting		"	G.F. 100869		
action before court					
action dismissed and set					

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10425

## Appendix A-2

DATE	PROCEEDINGS	Date Order Judgment No
1964		
4/24	Complaint. filed. Summons not issued per request of Mr. Scherf.	
4/29	Summons issued and with copies of same and of said complaint handed the Marshal for service.	
5/8	Appearance of William L. Felstiner and Harry J. Wexler entered for all defendants.	
5/13	Stipulation extending time within which defendants may answer or otherwise move until June 3, 1964, filed. Ordered Accordingly. Earl, C.	
5/15	Marshal's return showing service, filed. - Summons and Complaint.	
5/25	Appearance of John D. Fassett and William J. Doyle entered for the defendants.	
5/27	Stipulation that the time within which the defendants may answer is extended until June 26, 1964; that the depositions noticed by the plaintiff for May 29, 1964, shall be continued without date pending the determination of certain motions to be filed by the defendants on or before June 26, 1964, filed. Ordered Accordingly. Earl, C. Copies mailed Messrs. Sachs, Felstiner and Fassett.	
6/26	Motions to Dismiss for Lack of Jurisdiction and Improper Venue, filed by defendants.	
"	Memorandum in Support of Defendants' Motion to Dismiss, filed.	
8/3	Stipulation Extending Time of the Plaintiff to serve and file answering affidavits, briefs and cross motion, if any, in response to the defendants' motions to dismiss for lack of jurisdiction and improper venue to August 21, 1964, filed. Ordered Accordingly. Earl, C.	
9/9	Stipulation Further Extending Time of the Plaintiff to serve and file answering affidavits, briefs and cross motions to and including Sept. 18, 1964, filed. Ordered Accordingly. Earl, C. M-9/10/64	
11/2	Answers to Plaintiff's Interrogatories, filed by defendants.	
4/21	Defendants' Reply Brief, filed.	
4/30	Plaintiff's Interrogatories to defendants, filed.	
"	Plaintiff's Memorandum in Opposition to Defendant's Motion to	
"	Dismiss for Lack of Jurisdiction and Improper venue, filed.	
"	Plaintiff's Supplemental Brief Relating to Questions of	
5/1	Connecticut Law in Response to Defendants' Reply Brief, filed.	
5/17	Request for assignment for hearing of defendants' Motion to dismiss for lack of jurisdiction and improper venue filed on June 26, 1964, filed by defendants.	
5/17	Hearing on Defendants' Motion to Dismiss for Lack of Jurisdiction and Improper Venue. Atty. Herbert Sharp, 122 E. 42nd St., New York, N.Y., admitted for the purpose of this case. Motion granted except to defendants Edward W. Miller, Sterling Chatfield, Wm. B. Gumbart and N. H. Board and Carton Co. Plaintiff granted leave to amend complaint. Zampano, J. M-5/18/65.	
5/21	Order on "Defendants' Motions to Dismiss for Lack of Jurisdiction and Improper Venue", entered. ORDERED that Paragraph 2 of said motions is granted and the action is dismissed for lack of jurisdiction over the persons of defendants Simco Waste Paper Co., Inc., Machinery Rental & Equipment, Inc., Lesado, Inc., Tropical Systems, Inc. and Service Container, Inc.; that Paragraph 3 of said motions is granted and the action is dismissed because of improper venue as to defendants Leon J. Simkins, Morton H. Simkins, Dorothy Simkins, Leon Meltzer, Jacob Siegal, Miami Paper Board Mills, Inc. and Benner Box, Inc.; that Paragraph 4 of said motions is granted and the action is dismissed insofar as it purports to allege a class	

## CIVIL DOCKET JEFF SIMON, as Custodian, et al v. THE NEW HAVEN BOARD &amp; CARTON

DATE 1965	FILINGS—PROCEEDINGS	CO., INC. ET'ALS	AMOUNT REPORTED IN EMOLUMENT RETURNS
	action, but such dismissal is without prejudice to the right of plaintiff, if he so desires, to include in such substituted complaint as he may file in this action allegations meeting the requirements of Rule 23, F.R.C.P.; that, insofar as Paragraph 1 of said motions is based on failure of complaint properly to allege diversity jurisdiction with respect to the remaining four defendants, said objection is sustained but plaintiff is granted 30 days from date of entry of this order in which to file a substituted complaint against such four defendants; (The New Haven Board & Carton Co., Inc., Edwin W. Miller, Sterling R. Chatfield, William B. Gumbart). Zampano, J. M-5/21/65 Copies of Order mailed Attys. Sachs, Felstiner, Fassett, Liebowitz, Deixel & Brodsky; and Bobroff, Olonoff & Scharf. (See Order for further details re substituted complaint, etc.)		
6/16	Amended Verified Complaint, filed.		
6/22	Notice of Motion and Motion for Security for Expenses and For a Stay, filed by defendants.		
9/2	Plaintiff's Cross-Motion to Add Party Defendants in this Action as to Count II of the Amended Complaint, for Production of Papers and Documents Pursuant to Rule 34, F.R.C.P. and for an Order Directing Commencement of Depositions Heretofore Noticed by Plaintiffs filed together with Notice of Motion.		
"	Memorandum in Support of Motion for Security for Expenses and For a Stay, filed by defendants.		
9/13	Plaintiff's Memorandum in Opposition to Defendants' Motion for Security for "Expenses" and for a Stay and in Support of Cross-Motions Pursuant to Rules 33 and 34 F.R.C.P., filed.		
9/20	Hearing on (1) Defendants' Motion for Security for Expenses and for a Stay; (2) Plaintiff's Cross-Motion to Add Party Defendants in this Action as to Count II of the Amended Complaint, for Production of Papers, etc., and for Order Directing Commencement of Depositions. Order entered by endorsement as follows: (1) "Security for Expenses is denied. Court orders bond of \$500.00 be filed as security for costs under Rule Zampano, J. (2) "Motion granted to add party		



DATE 1965	FILINGS--PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
	defendants; motion granted for production of papers, etc., in all respects except paragraph 3(i) beginning with the words "and all records or papers *** traded.", until counsel have had an opportunity to examine records, etc., at which time motion may be renewed upon showing of good cause; taking of depositions may commence at a time agreed upon by counsel." Zampano, J. Copies of endorsement mailed Attys. Scharf, Sachs, Felstiner, Fassett and Liebowitz, Deixel & Brodsky. M-9/27/65	
10/15	Bond for Costs in the amount of \$500.00, filed by plaintiff, pursuant to Order dated September 20, 1965.	
10/21	Second Amended Verified Complaint, filed.	
10/22	Appearance of John D. Fassett, of Wiggin & Dana, entered for all defendants named in Second Amended Verified Complaint dated October 5, 1965, except Malcolm Sanders.	
"	Motion to Dismiss Count II of Second Amended Verified Complaint and Notice of Motion, filed by defendants (other than Malcolm Sanders).	
"	Memorandum in Support of Motion to Dismiss Count II of Second Amended Verified Complaint, filed by defendants (other than Malcolm Sanders).	
12/15	Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss Count II of Second Amended Verified Complaint, filed.	
1966		
1/17	Hearing on Defendants' (Other than Malcolm Sanders) Motion to Dismiss Count II of Second Amended Verified Complaint. Decision Reserved. Zampano, J. M-1/18/66	
2/9	Ruling on Defendants' Motion to Dismiss, entered. Defendants' Motion to Dismiss is denied. Zampano, J. M-2/10/66 Copies mailed Attys Sachs, Wexler and Fassett.	
3/4 1967	Answer to Second Amended Verified Complaint, filed.	
4/20	Stipulation filed that Edwin W. Miller, Sterling R. Chatfield, Morton H. Simkins, Dorothy Simkins, Leon J. Simkins, William B. Gumbart and Leon Meltzer, may have until May 19, 1967, to answer or move with respect to Plaintiff's interrogatories to them Numbered 1 through 111. Ordered Accordingly. Earl, C. M-4/21/67 Copies mailed Attys Scharf and Fassett, Sachs.	

(Cont'd.)

110 Rev. Civil Docket Continuation JEFF SIMON, as Custodian, et al v. THE NEW HAVEN BOARD &amp;

DATE	PROCEEDINGS	CARTON CO., INC., ET ALS	Date Order or Judgment Noted
6/67			
6		Stipulation filed that Edwin J. Miller, Sterling R. Chatfield, Morton H. Simkins, Dorothy Simkins, Leon J. Simkins, William B. Gumbart and Leon Meltzer may have until July 1, 1967 to answer Plaintiff's Interrogatories to them Numbered 1 through 111. Ordered Accordingly. Earl, C. M-6/6/67 Copies returned to Atty Fassett.	
7/25		Deposition of William S. Medinger, filed.	
/14		Answers to Interrogatories, filed by Defendant William B. Gumbart.	
/31		Answers to Interrogatories Propounded by the Plaintiff, filed by Defendant Morton H. Simkins.	
/26		Answers To Interrogatories Propounded By The Plaintiff, filed by Defendant, Dorothy Simkins.	
10/2		Answers To Interrogatories Propounded By the Plaintiff, filed by Defendant, Leon J. Simkins.	
11/24		Answers To Interrogatories Propounded By The Plaintiff, filed by Defendant, Edwin W. Miller.	
168		Filed on Trial List	
5/23/68			
969			
2/30		List of Plaintiff's Exhibits to be Offered at the Trial and List of Plaintiff's Witnesses, filed.	
"		Supplemental Lists of Plaintiff's Exhibits and Witnesses, filed.	
970			
/12		Withdrawal of Appearance, filed by William L. F. Felstiner.	
30		Pre-trial Report of Special Masters McNerney & Winnick, entered.	
		"Jurisdiction disputed by Defendant - Court granted it. Counsel will confer during October, 1970, for possible settlement and will report results before trial. Plaintiff's counsel has definite trial assignment in New York for October. Ready for trial second week of November, 1970." So Ordered. Zampano, J. M-10/2/70. Copies mailed counsel.	
/5		Plaintiff's Pre-trial Memorandum, filed.	
		Defendant's Pre-trial Memorandum, filed.	
BM			
/25 1972		At the call of Judge Newman's Court Assignment List at New Haven - "Ready - 3-week trial. Date to be set by the court.	
/10		Appearance of Louis M. Winer entered for defendant William B. Gumbart.	
/15		Court Trial Commences. Opening Statement by Plaintiff 4:05 to 4:13 P.M. Plaintiff's Exhibits 1 thru 4, 7 thru 25, 27 & 28, filed. Court adjourned at 5:05 to 3/16/72 at 10:00 A.M. Newman, J. M-3/16/72	
/16		Court Trial Continues. Plaintiff's Exhibits 29 thru 55 filed. 1 Plaintiff's witness sworn and testified. Plaintiff's Exhibits 56 thru 62 filed. Defendant's Exhibits A, B & C, filed. Court adjourned in this case at 5:10 P.M. until 10 A.M., 3/17/72. Exhibits retained by counsel for Plaintiff (29 thru 33, 36 thru 41, 43, 45, 46, 49, 50, 53, 51, 52, 56 thru 60; Def. A, B, C.) Newman, J. M-3/17/72	
3/17		Court Trial Continues. Plaintiff's witness, Douglas Bellemore resumes the stand for further testimony. Defendant's Exhibit D filed. Plaintiff's Exhibits 63 thru 66, filed. Court adjourned in this case at 12:25 until Tuesday, 3/21/72 at 10:00 A.M. Newman, J. M-3/17/72	
/21		Court Trial continues. Plaintiff's witness Douglas Bellemore resumes the stand for further testimony. By Agreement of Court and Counsel, Defendant given leave to call a witness out of order. 1 Defendant's witness sworn and testified. Defendant's Exhibits	

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Appendix A-6

DATE	PROCEEDINGS	D. Jud.
1972	E thru K, filed. Plaintiff's Exhibits 67 and 68 filed. Court adjourned at 5:10 P.M., to 3/22/72 at 10:00. Newman, J. M-3/22/72	
3/22	Court Trial Continues. 1 Plaintiff's witness sworn and testified. Plaintiff's Exhibit 69 filed. Defendants' Exhibits L, M and N, filed. Court adjourned at 3:50 P.M., until 10:30 A.M. 3/23/72. Newman, J. M-3/23/72	
3/23	Court Trial continues. Plaintiff rests his case with leave to continue cross-examination of witness Sklar and produce one or more exhibits. 1 Defendants' witness sworn and testified. Defendants' Exhibits O, P, Q & R, filed. By agreement of Court and counsel, Plaintiff's counsel may remove exhibits for copying. Court adjourned at 4:00 P.M. until 3/28/72 at 10:00 A.M.	
3/27	Court Reporter's Transcript of Testimony of Irvin Sklar on March 21, 1972, filed. (Phelps, R.)	
3/28	Court Trial Continues. Plaintiff's Exhibits 5, 6, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, filed. Defendant's witness William S. Medinger sworn and testified. Defendant's Exhibits S, T, U, V & W, X, filed. Irving Sklar, whose testimony was interrupted, resumes the Stand for further testimony. Defendant's Exhibit Y filed. Defendant William Gumbart, sworn and testified. Plaintiff rests at 4:30 P.M. Defendants' Exhibits Z, AA thru OO, filed. Defendants rest at 4:48 P.M. Defendants make oral motion to dismiss certain parties. Decision Reserved. Defendants' Brief on Motion to Dismiss to be filed 4/17; Plaintiff's Brief due 10 days thereafter. Decision Reserved on case. Plaintiffs' Brief due 30 days after receipt of transcript; Defendants' Brief due 30 days thereafter. Plaintiff may file Reply Brief in 15 days thereafter. Court adjourned at 5:17 P.M. Newman, J. M-3/29/72	
8/25	Transcript of Proceedings of March 15, 1972, filed. Phelps, R.	R.
"	Transcript of Proceedings of March 16, 1972, filed. " "	"
8/28	Transcript of Proceedings of March 17, 1972, filed. Phelps, R.	R.
8/31	Transcript of Proceedings of March 21, 1972, filed. Phelps, R.	R.
9/11	Transcript of Proceedings of March 22, 1972, filed. Phelps, R.	R.
9/20	Transcript of Proceedings held on March 23, 1972, filed. Phelps, R.	R.
10/3	Transcript of Proceedings of March 28, 1972 (7th day of trial) filed. Phelps, R.	
11/8	Plaintiff's Brief Submitted After Trial, filed.	
12/18	Defendants' Brief Submitted after Trial, filed.	
1973		
1/22	Post-Trial Brief Submitted on Behalf of Defendant William B. Gumbart, filed.	
2/28	Plaintiff's Reply Brief Submitted After Trial, filed.	
3/13	Defendants' Supplemental Memorandum, filed.	
1974		
1/8	Memorandum of Decision, entered. Judgment will enter for the defendants denying all of plaintiff's claims for relief. Newman, J. M-1/8/74 Copies mailed.	
1/8	Motion to Amend Complaint, filed by Plaintiff. (File Stamped late - document dated March 2, 1972)	
"	Plaintiff's Trial Memorandum of Law, filed. (File stamped late - document dated March 12, 1972)	
1/9	Judgment entered in favor of defendants, dismissing the action on the merits, with costs to the defendants. Markowski, C. M-1/10/74 Copies mailed.	

9



APPENDIX B

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----X  
JEFF SIMON, as Custodian for GAIL NINA SIMON,  
Under the New York Uniform Gifts to Minors  
Act,

Plaintiff,

Civil Action  
No. 10425/1964

-against-

THE NEW HAVEN BOARD & CARTON COMPANY, INCOR-  
PORATED, EDWIN W. MILLER, STERLING R. CHAT-  
FIELD, WILLIAM B. GUMBART, LEON J. SIMKINS,  
MORTON H. SIMKINS, DOROTHY SIMKINS, LEON  
MELTZER, JACOB J. SIEGAL, and MALCOLM SANDERS,

Defendants.

SECOND  
AMENDED  
VERIFIED  
COMPLAINT

-----X  
COUNT I AS TO DEFENDANTS, THE NEW  
HAVEN BOARD & CARTON CO. INC.,  
EDWIN W. MILLER, STERLING R. CHAT-  
FIELD and WILLIAM B. GUMBART.

Plaintiff, JEFF SIMON, by his attorneys, as and for  
his complaint against the defendants above named, respectfully  
alleges and shows, upon information and belief, as follows, except  
as to the allegations contained in paragraphs "1", "2", "3", "4"  
and "5", which are alleged upon knowledge.

The Parties and Co-Conspirators

1. Plaintiff, JEFF SIMON, as Custodian for GAIL  
NINA SIMON, under the New York Uniform Gifts to Minors Act (herein-  
after called the "plaintiff") is, and has been at all of the

SECOND AMENDED VERIFIED COMPLAINT

material times hereinafter alleged the Custodian for GAIL NINA SIMON, under the New York Uniform Gifts to Minors Act with all of the duties and powers granted in said Act, of 1,000 shares, represented by Certificate Number F 1313, of the \$10 par value common stock of the defendant, THE NEW HAVEN BOARD & CARTON COMPANY, INC., (herein called "NEW HAVEN"). Plaintiff is a citizen and resident of the State of New York.

2. NEW HAVEN is a corporation organized and existing under the laws of the State of Connecticut. Its principal place of business is in New Haven, Connecticut.

3. Plaintiff brings this action derivatively and in the right of and on behalf of NEW HAVEN. Plaintiff has been a stockholder of NEW HAVEN since on and about December 15, 1963, and was such at the time of the acts and events of which complaint is made herein. This action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. No effort has been made to secure from the managing directors of NEW HAVEN the relief sought herein, because to make such demand would be a futile effort by reason of the domination and control of the said directors, as hereinafter alleged and because of the fact that the present board consists entirely of persons who are named defendants or co-conspirators herein and, therefore, such demand would constitute a request that they bring suit against themselves and they



SECOND AMENDED VERIFIED COMPLAINT

would not be able properly to prosecute the same. The Board of Directors have had knowledge of the transactions and claims set forth herein and have failed and refused to seek redress therefor.

4. The defendants, EDWIN W. MILLER, STERLING R. CHATFIELD and WILLIAM B. GUMBART, are residents and citizens of the State of Connecticut and are and were at the times herein alleged directors of NEW HAVEN. They are sometimes hereinafter collectively referred to as "the individual defendants". The individual defendants, in their capacities as directors of NEW HAVEN, and in their individual capacities, have authorized and participated in the acts herein complained of.

5. Leon J. Simkins, (hereinafter called "LJS"), is and has been President and director of NEW HAVEN since August 1963. LJS's brother Morton H. Simkins (hereinafter called "MHS"), is and has been NEW HAVEN's Executive Vice President and Treasurer and member of NEW HAVEN's Board of Directors since August, 1963. Dorothy Simkins (hereinafter called "DS") is the mother of LJS and MHS and a director of NEW HAVEN. Miami Paper Board Mills, Inc., (hereinafter called "Miami") is a corporation organized and existing under the laws of the State of Florida. Benner Box, Inc. (hereinafter called "Benner") is a corporation organized and existing under the laws of the State of Florida. The remaining members of the NEW HAVEN board of directors during the times herein complained of were Malcolm Sanders, John L. McCreery, Leon Meltzer

SECOND AMENDED VERIFIED COMPLAINT

and Jacob J. Siegal. All of the persons and corporations named in this paragraph are hereby designated as co-conspirators and during the times herein complained of acted in concert with the individual defendants.

6. On July 10, 1963, LJS, MHS and other members of the Simkins family (hereinafter called at times "the Simkins family") through affiliated Florida corporations acquired one hundred forty-nine thousand, three hundred seventy-one (149,371) shares of NEW HAVEN common stock. Thereafter, LJS, as Chairman, MHS, DS and certain other present directors of NEW HAVEN designated by them, were elected to NEW HAVEN's board of directors. As a result of direct and indirect ownership of NEW HAVEN's common stock, their corporate positions and designations as hereinabove alleged, LJS and MHS have had and have exercised effective control and dominion over the entire board of directors and management of NEW HAVEN, including the individual defendants, from July 1963 down to the present date.

7. Simco Waste Paper Co. Inc., Machinery Rental & Equipment, Inc., Lesado, Inc., Tropical Systems, Inc. and Service Container, Inc., are corporations, each of which was organized and now exists under the laws of the State of Florida, and all, or substantially all, of the capital stock of which corporations is owned by LJS, MHS and DS and other members of the Simkins family. LJS owned, at such times, directly and bene-



SECOND AMENDED VERIFIED COMPLAINT

ficially approximately 51.33% of its common stock and approximately 12% of the preferred stock of Miami. MHS owned, at such times, directly and beneficially approximately 26.33% of Miami's common stock and approximately 12% of its preferred stock. DS owned at such times, directly and beneficially 4% of Miami's preferred stock.

Jurisdiction and Venue

8. Jurisdiction of this Court is based upon Section 1332 of the Judicial Code of the United States (28 U.S.C. §1332) by reason of diversity of citizenship of the parties. The amount in controversy exceeds the sum or value of \$10,000., exclusive of interest and costs. Venue is laid in this District under the provisions of Section 1391 of the Judicial Code of the United States (28 U.S.C. § 1391) in that all the defendants reside in this District.

Acts Complained Of

9. In or about 1963, Miami, Benner, LJS, MHS, DS, the defendants, the Simkins family, and other corporations, persons and firms not presently known to plaintiff, including Florida corporations affiliated with the Simkins family, entered into and acted according to a plan or conspiracy whereby and where- under LJS, MHS and the Simkins family would acquire and use stock control and management control of NEW HAVEN in order to enrich

SECOND AMENDED VERIFIED COMPLAINT

themselves at the cost and expense of NEW HAVEN, by doing and performing the acts herein complained of, or acts substantially similar thereto, and by means of a program of acquisition of NEW HAVEN stock by LJS, MHS, DS and the Simkins family, directly and indirectly for inadequate consideration to NEW HAVEN by acquiring additional NEW HAVEN stock from NEW HAVEN through merger with Miami and Benner as herein complained of thereby gaining effective control of the use and benefit of the valuable assets, accounts, good will and tax loss carryforward of NEW HAVEN, at a total cost to LJS, MHS, DS and the Simkins family, at far below the cost which such acquisition and merger would require, in the absence of said plan or scheme, and could divert to said LJS, MHS and the Simkins family NEW HAVEN stock from NEW HAVEN for inadequate consideration and thereby give and divert to them assets of NEW HAVEN and secret profits at the expense of NEW HAVEN in violation of the duties of LJS, MHS and DS as directors and officers of NEW HAVEN as established by the statutory and common law of the State of Connecticut.

10. As part of said scheme or plan, LJS, MHS and the Simkins family did acquire on July 10, 1963, 149,371 shares of NEW HAVEN common stock from Albemarle Paper Company and other stockholders of NEW HAVEN. Thereafter, with the aid, acquiescence, assistance and connivance of the individual defendants who joined the said conspiracy in or sometime after July, 1963, LJS, and MHS did the following acts and things:



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(a) They designated LJS, MHS and DS and other present directors including the individual defendants, to the board of directors of NEW HAVEN, and thereafter dominated and controlled such board of directors and the management of NEW HAVEN, and caused them to participate in and approve the unlawful acts, resolutions and matters hereinafter complained of in the following sub-paragraphs, thereby depriving NEW HAVEN of the independent business judgment and representation of said board and management to which it was entitled under Connecticut laws;

(b) They caused the said NEW HAVEN and its management including the individual defendants to distort in reports to stockholders the true state of affairs of NEW HAVEN so as to create the false impression in NEW HAVEN's reports to stockholders, proxy statements, and in solicitations of stockholders' proxies that NEW HAVEN was continuing to operate at a loss with little or no prospect for profitable operations or dividends in the future, that NEW HAVEN was financially insecure, and that NEW HAVEN's only hope for profits and dividends was through a merger with Miami at prices and upon terms dictated by

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Miami and the Simkins family;

(c) In and by said reports and statements, they concealed the existence of the objectives of the said plan in order to capture, use and benefit from the assets, good will, accounts and tax-loss carry forward of NEW HAVEN so that LJS, MHS and the Simkins family would be able to purchase newly issued stock of NEW HAVEN, at prices far below the true and intrinsic worth of said stock, as known to the individual defendants, without the benefit of any arm's-length bargaining and upon terms manifestly and grossly unfair to NEW HAVEN, so as to obtain the requisite corporate approvals thereof, without full and adequate disclosure;

(d) In or about January, 1964, they caused NEW HAVEN, Miami and Benner to enter into a so-called "Agreement and Plan of Merger" dated as of January 16, 1964, wherein and whereby the directors of NEW HAVEN, including the individual defendants, the directors of Miami (to wit, LJS, MHS, DS and one Vivian Simins) and the directors of Benner (to wit, LJS, MHS, DS and one Vivian Simkins) agreed, subject to requisite approvals by the respective stockholders of each of said corporations, that Miami and Benner



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should be merged with and into NEW HAVEN, which was to be the surviving corporation under its present charter, as modified and restated in said agreement. The amount of the capital stock of the surviving NEW HAVEN was agreed to be \$2,000,000 divided into 2,000,000 shares of common stock with a par value of \$1.00 each;

(e) In and by said merger agreement, they caused the said directors, including the individual defendants, to execute said agreement by means of their hereinabove-alleged domination and control of them, disregarding and in violation of the interests of NEW HAVEN, to agree to the following:

(i) That the 460,353 shares of \$10.00 par value NEW HAVEN common stock then presently issued and outstanding, including treasury stock, to be retained by the holders of said shares to represent, after the merger, 460,353 shares of the 2,000,000 shares \$1.00 par value common then outstanding by increase of capital stock; and

(ii) That NEW HAVEN at the same time, would issue 1,377,774 shares of its said common stock for all of the authorized and issued common and preferred stock of Miami and Benner,

despite the fact that the said ratio of stock in the surviving NEW HAVEN is and was grossly inadequate and manifestly unfair, and not the result of arm's-length negotiation between the boards or managements of NEW HAVEN, Miami and Benner and was dictated by

SECOND AMENDED VERIFIED COMPLAINT

LJS, MHS, Miami, Benner and the Simkins family, without even considering taking into account, or demanding credit on behalf of NEW HAVEN any of the following values and assets: (1) the liquidation values of NEW HAVEN's assets, (2) NEW HAVEN's earnings value or "going concern" value, (3) the value of NEW HAVEN's tax-loss carryforward of \$2,000,000 to the surviving NEW HAVEN, (4) the value of NEW HAVEN's good will and accounts to Miami and to the Simkins family, as the owners and holders of 1,377,774 shares out of 2,000,000 shares of the surviving NEW HAVEN under the merger plan, (5) the value to the Simkins family of the increased resultant stock control of NEW HAVEN, (6) the current profitable nature of NEW HAVEN's business and assets concealed from the stockholders, as hereinafter alleged, (7) the additional values and assets hereinafter alleged in paragraph 11 hereof;

(f) One of the purposes and objectives of said merger plan was to effect a merger whereby, in addition to the 149,371 shares of NEW HAVEN theretofore acquired in July, 1963, LJS MHS and the Simkins family, through ownership and control of Miami and Benner, would acquire an additional 1,377,774 shares



SECOND AMENDED VERIFIED COMPLAINT

out of 2,000,000 total outstanding, or 76.3% control of the surviving corporation, putting said defendants in a position to merge, liquidate, or sell substantially all of NEW HAVEN's assets without further minority stockholder approval and, by such a device, to avoid payment to NEW HAVEN of any premiums for control over the management of NEW HAVEN and its valuable assets, good-will and tax-loss carryforward for the special value of the same to Miami and to Benner, and for the other values and assets of NEW HAVEN herein alleged, which they would otherwise have been required to pay, absent the acts and breaches of duty herein complained of and thereby to mulct NEW HAVEN of adequate and fair consideration for the 1,377,774 shares of NEW HAVEN to be issued and to make a secret profit thereby for the Simkins.

11. As part of said scheme and plan, and in order to deceive the public stockholders into approving said merger plan, despite its unfairness, and despite the hereinabove alleged purpose, objectives and plans of defendants, the individual defendants, in breach of their fiduciary duty to NEW HAVEN, participated in the following acts and things:

(A) The issuance and mailing of a NEW HAVEN

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Annual Report dated February 7, 1964 to stockholders and a Notice of Annual and Special Meeting of Stockholders of NEW HAVEN and Proxy Statement dated February 12, 1964, (a true copy of which Proxy Statement is annexed hereto as Exhibit "A", and made a part thereof) calling for and urging the approval of said merger by the affirmative vote of the holders of two-thirds of the total number of the outstanding shares of the common stock of NEW HAVEN, (which Report, Notice and Proxy Statement, issued and circulated) for the purpose of inducing the stockholders in NEW HAVEN to approve said issuance of NEW HAVEN stock, and, thereby, to deliver to LJS, MHS, Miami, Benner, the NEW HAVEN stock referred to above for inadequate consideration, as well as increased domination and control of the business and assets of NEW HAVEN by LJS and MHS at a fraction of the intrinsic worth thereof. The Report, Notice and Proxy Statement as was known to the individual defendants was distorted and misleading in the respects hereinafter alleged in subparagraphs (a) through (g) and was engineered by the conspirators in order to mulct NEW HAVEN of the said 1,377,774 shares of its stock for inadequate consideration and to benefit the Simjins at the expense of NEW HAVEN and to obtain the approval of the holders of two-thirds of the total number of the outstanding shares of NEW HAVEN common stock by the unlawful means herein alleged so as to prevent and forestall the NEW HAVEN stockholders from protecting and preserving NEW HAVEN's stock and assets:



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(a) The suppression and concealment of the fact that, prior to and without the proposed merger, NEW HAVEN had begun to realize profits as a result of economics and other improvements achieved by management, and had, for the four-month period from October 1963 through January, 1964, actually shown a profit of \$100,000.00 as evidenced by unaudited figures, or some amount approximately equal thereto. In furtherance of such suppression and concealment in said Annual Report and Proxy Statement, the defendants reported instead and emphasized the purported fact that NEW HAVEN "has been sustaining losses continually for the past 7 years", thereby placing a great strain upon its finances, implying that no meaningful present or future profit picture could be presented and that the proposed merger was indispensable to the future growth and profitable operation of NEW HAVEN, that the current fiscal year (that is October 1, 1963 through September 30, 1964) would be a good one as a result of the merger, and that NEW HAVEN was on the threshold of a "new era of progress and profitability" if the proposed merger were approved, thereby, creating the false and misleading impression that NEW HAVEN was not and could not then be earning profits - despite management's current program of economy, liquidation of unprofitable plan and reduction of debt- unless and until the said merger favored by LJS and MHS was approved, when in truth and in fact, defendants well knew that was not the fact.

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(b) The suppression and concealment of the said facts for the purpose of disguising NEW HAVEN's actual earnings and earning potential, absent a merger, so as to justify said proposed stock ratio and to discourage active opposition thereto for the benefit of NEW HAVEN and to forestall any prevention of the issuance of the said NEW HAVEN stock for inadequate consideration, as hereinabove alleged.

(c) The suppression and concealment of the true liquidation value of the assets and plants of NEW HAVEN and the value thereof to Miami and Benner for such purpose, despite the fact that:

(i) the purported net asset value or book value of NEW HAVEN was reported as \$5.526 million dollars, as contrasted with the net asset value or book value of Miami and Benner reported at \$2.452 million dollars;

(ii) that the Simkins family after the merger would be able to liquidate, at will, all or any portion of said \$5.526 million in book assets through their resultant 76.3% stock control; and

(iii) sales by NEW HAVEN of fixed assets in the fiscal year ending September 30, 1963 resulted in substantial gains, indicating that the book values of fixed assets might in instances be less than their true worth.

(d) The statement to stockholders that the \$2,000,000 tax loss carry-forward was totally worthless and for that reason, would be of no value to the Simkins family after the merger and, therefore, did not justify any consideration whatever



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in the purported negotiation between NEW HAVEN directors and Miami and Benner directors or in the stock ratio resulting therefrom.

(e) The statement or implication that the over-the-counter market prices for the common stock on January 15, 1964 were the proper basis for determining the said stock ratio, to the exclusion of the other elements and value factors hereinabove referred to, pertinent to any arm's-length dealing and concealed from the NEW HAVEN stockholders, to wit:

(I) the true current earnings and profit of NEW HAVEN from October 1, 1963 through January 30, 1964;

(II) projections of earnings and profits of NEW HAVEN for the current fiscal year based on the operations, as existing without a merger;

(III) the "going concern" value of NEW HAVEN;

(IV) the liquidation or net asset value of NEW HAVEN;

(V) the going value of NEW HAVEN's \$2,000,000 tax loss carry-forward;

(VI) the value to NEW HAVEN of the agreement of SIMCO WASTE PAPER, INC. to sell the \$2,100,000 note of Penn Mutual Life Insurance Co. to NEW HAVEN at a discount of approximately \$440,000 even if said merger were not approved;

(VII) the value to NEW HAVEN of the various innovations, improvements and consolidations of plant and personnel effected by the new management of NEW HAVEN since July 1963 as it was reflected in the current operations and in the profitability of NEW HAVEN's operation, and as it would continue to be so reflected in the absence of the proposed merger;

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(VIII) the particular worth or peculiar value of the said assets and operations to Miami, Benner and their stockholders;

all of which factors should have entered into the negotiations of the stock ratio between the NEW HAVEN directors and the Miami and Benner directors and should have been dealt with and disclosed in said Proxy Statement if the defendants had properly discharged their duties as directors and fiduciaries of NEW HAVEN.

(f) The statement or implication that one of the "reasons" for the merger was the necessity to obtain sufficient cash and credits with which NEW HAVEN could obtain the benefit of an agreement of SIMCO WASTE PAPER, INC., (hereinafter called "SIMCO") whereby SIMCO, a company affiliated with Miami and Benner and owned and controlled by LJS, MHS and the Simkins family, having entered into an agreement on December 31, 1963 to purchase a note due Penn Mutual Life Insurance Company (the unpaid balance of which in December 1963 was \$2,100,000) for \$1,666,687 upon certain terms and conditions, agreed to sell the said note to NEW HAVEN at its cost, when in truth and in fact:

(I) neither the said agreement between SIMCO and NEW HAVEN (nor the cash and credits required for consummation thereof) were dependent upon said merger;

(II) the repurchase of said note by NEW HAVEN and the advantages flowing therefrom could have been



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achieved by equivalent means; and

(III) the entire transaction was a ruse and a device by LJS and HMS to render NEW HAVEN apparently dependent upon the Simkins family and their proposed merger, to exert undue, synthesized pressure upon NEW HAVEN stockholders to accept and approve said merger and to suppress and conceal a current quarterly profit to NEW HAVEN of \$100,000 for that purpose.

(g) The statement or implication, (for the purpose of discouraging stockholder opposition or organized dissent to said plan) that dissenting holders of common stock of NEW HAVEN, in the event of the merger, had rights under Sections 33-373 and 33-374 of the Connecticut Stock Corporation Law to an appraisal of the fair value of their stock, thus granting to them an apparent choice of accepting said stock ratio or an appraisal of their shares when, in truth and in fact, the dissenting stockholders had no such rights.

(B) Although NEW HAVEN's management and directors agreed to use, and did use an investigation and appraisal of Miami and Benner by the American Appraisal Company taking into account the history of the companies, their financial position, "prospective net profit" cash flow, the "character, physical condition, and utility of the plant assets", "the fair market value of non-operating

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property" as well as "the value indicated by capitalization of net profit and cash flow" (Exhibit "A" hereto, p. 10) as the basis for the evaluation of Miami and Benner, solely for the purpose of furthering the aims and objectives of said conspiracy and solely in order to keep the amount of stock in the surviving NEW HAVEN to be paid to existing NEW HAVEN stockholders at a minimum and the amount to be paid by LJS, MHS, DS and the Simkins interests at a maximum and to ensure the issuance of the said 1,377,774 shares to the Simkins for a grossly inadequate consideration to NEW HAVEN, the individual defendants willfully failed and neglected to have any similar appraisal or study made of the identical factors in NEW HAVEN, even though such a study could have been made and could have assisted an independent NEW HAVEN board in obtaining a more advantageous agreement for NEW HAVEN from Miami, Benner and the Simkins interests. Any and all information bearing upon said factors including the current values of NEW HAVEN's operations, the current profitable nature of NEW HAVEN's operations, the fair market value of NEW HAVEN's non-operating properties, including the sales prices and corresponding depreciated book values of assets sold during 1963 and 1964, the current worth or value in the market and to the Simkins interest of NEW HAVEN's \$2,000,000 tax loss carry-forward and the true current profits of NEW HAVEN were deliberately suppressed and withheld for the purposes hereinabove alleged to the detriment of NEW HAVEN.



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12. It was, and it still is, the intention of the Simkins family to have the following dependent corporations, all or substantially all of the capital stock of which is owned by LJS, MHS, DS and other members of the Simkins family, continue to engage in the business transactions described below with the surviving NEW HAVEN, with the acquiescence of the individual defendants unless they be restrained by order of this Court: Simco, Machinery Rental and Equipment Inc., Lesado Inc., Tropical Systems, Inc. and Service Container, Inc.:

(a) Simco and its wholly-owned subsidiary, Seaboard Paper Stock, Inc., a Florida corporation, both of which are engaged in the business of grading and baling waste paper, supply approximately 40% to 50% of Miami's waste paper requirements and it is believed that they shall continue so to do for the Miami division of NEW HAVEN after the merger.

(b) Machinery Rental & Equipment, Inc. leases paper box machinery and equipment to Benner and shall continue so to do for the Benner division of NEW HAVEN after the merger.

(c) Lesado Inc., owns and leases to Miami approximately one acres of land with buildings and improvements at an annual rental of \$18,000 and shall continue so to do until at least 1967 with Miami division of NEW HAVEN after the merger.

(d) Tropical Systems, Inc. owns and leases

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to Miami and Benner, trucks, tractors and automotive equipment and shall continue so to do after the merger.

(e) Service Container Inc. is engaged in manufacturing corrugated cartons used for shipping purposes and shall supply all of Benner's requirements in such cartons after the merger. It also sub-leases 3,000 square feet of space from Benner for which it pays \$3,000 per annum under lease expiring December 31, 1973 and shall continue so to do after the merger.

(f) The terms and conditions of said proposed transactions between LJS, MHS, DHS and corporations owned or controlled by them were not entered into at arm's-length and were entered into for the personal benefit and gain of the said Simkins family members and shall continue to be maintained for that purpose from and after said merger as an added benefit or advantage to them. The said terms, conditions, gains and benefits were not adequately disclosed in said proxy statement and, therefore, the NEW HAVEN stockholders were not properly advised of the nature, scope and extent of the personal interest of LJS, MHS and the Simkins family, in advocating and in consummating said merger and in continuing to maintain said personally profitable transactions and arrangements with the surviving NEW HAVEN. Insofar as the merger contemplated continuance of said profitable arrangements and transactions with the Simkins family without such disclosure, it constituted a violation of defedants' duties to



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NEW HAVEN and an unlawful attempt by them to obtain prior approval for waste of NEW HAVEN's assets for the benefit of the Simkins family and diversion of corporate opportunities for their benefit, which should now be restrained by this Court.

13. The defendants, in attempting to justify the aforesaid stock ratio presented in the Proxy Statement, sent to the NEW HAVEN stockholders (Exhibit "A" hereof) a covering letter from the American Appraisal Company evaluating the current worth of Miami and Benner "as of August 31, 1963". The said Proxy Statement fails to disclose the current worth as of January 1964 or at any time reasonably proximate to the closing date of said merger, despite the fact that both Miami and Benner are going companies.

14. In presenting the alleged "MARKET PRICE OF NEW HAVENSTOCK" in said Proxy Statement (p. 14 of Exhibit "A") the NEW HAVEN management and defendants failed to disclose that the bid and asked quotations set forth therein were neither the actual market prices for the said common stock, or nor truly reflective thereof, but rather only the quotations given therefor in the over-the-counter market and failed to disclose actual market prices known to, or which could be ascertained by its management, the volume of stock relating to said prices and quotations, the total supply and amount of stock traded in the over-the-counter market and the extent to which said market was unrepresentative



of underlying "fair market values" corresponding to the measure or standard purportedly used by The New Haven directors in evaluating the Miami and Benner stock.

15. From in or about August 1963 to February 1964 by means of the pessimistic and bearish reports and concealments of material facts, hereinabove alleged, the defendants aided in preventing any sales in the over-the-counter market from reflecting an informed judgment of willing buyers and sellers as to the fair value of NEW HAVEN'S stock, as part of their overall scheme to effect the unlawful and unfair merger of which complaint is made herein, and, by the same token, presented an untrue standard of value of NEW HAVEN stock, known to be untrue by NEW HAVEN's management.

16. By means of the aforesaid scheme and plan, the individual defendants, in violation of their respective duties as directors of NEW HAVEN, have participated in a waste of NEW HAVEN's assets, the unlawful issuance of 1,377,774 shares of its stock to their said co-conspirators for grossly inadequate consideration, to the loss of and damage to NEW HAVEN in the amount of at least \$2,000,000, as a secret profits, representing the difference between the true worth of said 1,377,774 shares and the true worth of the consideration paid therefor, to wit, the Miami and Benner stock. The individual defendants are

jointly and severally liable therefor to NEW HAVEN. The individual defendants are liable to NEW HAVEN for said loss and damage upon the additional ground that, under Connecticut law, even in the absence of fraud, the said transaction was null and void.

17. Unless restrained by this Court, the defendants herein named shall continue to commit the acts herein complained of, or acts substantially similar thereto.

18. There is no adequate remedy at law for NEW HAVEN.

WHEREFORE, it is respectfully prayed that a judgment be made and entered herein:

(a) enjoining and restraining the defendants, their officers, agents, servants, attorneys and employees from taking any steps to consummate the merger referred to in the complaint, and from committing any of the acts herein complained of, of any acts substantially similar thereto;

(b) declaring on behalf of and in the interest of NEW HAVEN that the transactions herein complained of to be null and void, and ordering that any acts, resolutions, approvals or steps taken by the individual defendants to consummate, or in furtherance of the said proposed merger be declared null, void and unlawful;



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(c) directing and requiring each of the defendants other than NEW HAVEN to account for any and all profits, gains, benefits or advantages resulting from the acts herein complained of, and to pay to NEW HAVEN any and all damage arising therefrom together with such amounts as will indemnify and hold NEW HAVEN harmless from all future damage which may result from the said acts;

(d) appointing a receiver for the assets of NEW HAVEN who shall be directed and required to preserve said assets from further waste or misconduct by the defendants, and, pending further order of the Court, to superintend the acts of NEW HAVEN's directors and officers for that purpose;

(e) providing such other and further relief as to this Court may deem just and proper, including provision for the payment of costs and expenses and an allowance for the reasonable value of the services rendered by plaintiff's attorneys in this action, resulting in benefit to NEW HAVEN or its common stockholders.

COUNT II AS TO ALL DEFENDANTS

The Parties and Co-Conspirators

1. -7. Plaintiff incorporates paragraph 1 through 7 of Count I inclusive, as paragraphs 1 through 7 of this Count II with the same force and effect as if set forth hereat word for word.

8. The defendant, Leon J. Simkins is a resident of the state of Florida; Morton H. Simkins is a resident of the state of Pennsylvania; Dorothy Simkins is a resident of the state of

Pennsylvania; Leon Meltzer is a resident of the state of Pennsylvania; Jacob S. Siegal is a resident of the state of Pennsylvania; Malcolm Sanders is a resident of the state of Pennsylvania.

Jurisdiction and Venue

9. Jurisdiction of this Court upon this Count II is based upon (i) the provisions of Section 1331 of the Judicial Code of the United States (28 U.S.C. §1331), and (ii) the provisions of Section 27 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78aa) by reason of the violation by the defendants of the provisions of the said Act hereinafter specified.

Venue is laid in this judicial district under the provisions of Section 27 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78aa). The acts and transactions constituting the unlawful acts herein complained of having been carried out in this judicial district in that the printed Proxy Statement and Annual Report hereinabove alleged were transmitted via the United States mails from this district to all the record holders of NEW HAVEN by the directors of NEW HAVEN, including the individual defendants.

ACTS COMPLAINED OF

10.-15. Plaintiff incorporates paragraphs 9, 10, 11, 12, 13 and 14 of Count I as paragraphs 9, 10, 11, 12, 13 and 14 of this Count II with the same effect as is set forth hereat, word for word, and re-numbered as aforesaid.



16. The scheme and plan hereinabove alleged constituted a scheme, device or artifice whereby NEW HAVEN as the issuer and seller of securities, to wit, said 1,377,774 shares of its common stock would be defrauded into issuing said stock for inadequate consideration and by the misrepresentations hereinabove alleged and, as a purchaser of securities, to wit, the stock of Miami and Benner, hereinabove alleged, for a consideration which exceeded by at least \$2,000,000, the true value and worth of said Miami and Benner stock.

17. The aforesaid Proxy Statement is a manipulative, deceptive, misleading and fraudulent scheme, device and artifice issued and mailed via the United States mails in connection with the purchase and sale of securities in violation of applicable statutes of the United States and of the Rules and Regulations of the Securities and Exchange Commission promulgated pursuant thereto, as hereinafter more specifically described, in that:

(a) The said Proxy Statement contained the willful concealments, misrepresentations, omissions of material facts necessary in order to make statements contained therein, in the light of the circumstances in which they were made not misleading, detailed in paragraphs 9, 10, 11, 12, 13 and 14 hereof.

(b) Said purchase and sale was to be effected only upon the affirmative vote of two-thirds of the stockholders of NEW HAVEN. The said scheme and plan was designed and employed to effect said purchase and sale by obtaining said requisite stockholder

consent by use of the mails through the means described in subparagraph (a) hereof.

18. By reason of the foregoing, the individual defendants and their co-conspirators, directly or indirectly, by use of means or instrumentalities of interstate commerce and of the mails employed a device, scheme, artifice to defraud in connection with the purchase and sale of securities to the loss and detriment of the seller and purchaser, NEW HAVEN and thereby violated Section 10(b) of the Securities and Exchange Act of 1934, as amended and Rule 10(b)5 of the Securities and Exchange Act, promulgated pursuant thereto.

19. By reason of the foregoing the individual defendants and their co-conspirators, directly or indirectly, by use of means or instrumentalities of interstate commerce, employed devices, schemes or artifices to defraud in connection with the purchase and sale of securities to the loss and detriment of the seller and purchaser NEW HAVEN and thereby violated the said Section 10(b) of the Securities Exchange Act and Regulation 10(b)5 promulgated pursuant thereto.

20. By reason of the foregoing, the individual defendants and their co-conspirators, directly or indirectly, by use of means or instrumentalities of interstate commerce, engaged in the acts, practices and courses of businesses hereinabove specified which operated or would operate as a fraud or deceit upon any person in connection with the purchase and sale of securities to the loss and detriment of the purchaser NEW HAVEN



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and thereby violated the said Section 10(b) of the Securities Exchange Act and Regulation 10(b)5 promulgated pursuant thereto.

21. As a court of law and equity, this Court pursuant to Section 27 of the Securities Exchange Act has broad equitable jurisdiction to entertain this derivative action and to fashion any appropriate remedy to right the wrong and injury done to NEW HAVEN as a person injured as a result of the violations of the Securities Exchange Act herein complained of.

22. NEW HAVEN has no adequate remedy at law.

WHEREFORE, plaintiff prays that this Court:

1. Order and adjudge and decree that the defendants have violated the Securities Exchange Act and Rule 10(b) 5, as hereinabove alleged.

2. That the defendants be adjudged liable to NEW HAVEN for all loss, injury and damage caused to it by virtue of the acts and transactions complained of in this Count, including the sale by NEW HAVEN of said 1,337,774 shares of its common stock par value and the purchase by it of all the authorized and issued Common and Preferred Stock of Miami and Benner and that NEW HAVEN shall have judgment therefor against each of the said defendants, jointly and severally in the amount of \$2,000,000 plus such additional amounts as the Court shall determine to have been the actual damage occasioned to NEW HAVEN.

3. That this Court award to plaintiff his costs and reasonable expenses in preparing and prosecuting this action, and allow to his attorneys reasonable attorneys' fees for their services

rendered in the premises.

4. That this Court provide for such other and further relief as it may deem necessary and proper.

October 5, 1965.

SACHS, SACHS, GIAMO & SACHS

By \_\_\_\_\_  
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COPY ATTACHED: "NOTICE OF ANNUAL AND SPECIAL  
MEETING OF STOCKHOLDERS,  
FEBRUARY 28, 1964."

(Reproduced infra as Appenuix F)

EXHIBIT "A"

APPENDIX C

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

\_\_\_\_\_  
JEFF SIMON, as Custodian For Gail Nina  
Simon, Under the New York Uniform Gifts  
to Minors Act,

Plaintiff,

VS.

THE NEW HAVEN BOARD & CARTON COMPANY,  
INCORPORATED, ET AL

Defendant  
\_\_\_\_\_

CIVIL ACTION

NO. 10425

ANSWER TO SECOND AMENDED  
VERIFIED COMPLAINT

COUNT I

1. As to paragraph 1, it is admitted that since on or about December 15, 1963, 1000 shares of \$10 par value common stock of The New Haven Board & Carton Company, Inc., represented by certificate number F1313 have been registered to the plaintiff. Defendants have no knowledge or information sufficient to form a belief regarding the remaining allegations of paragraph 1.

2. The allegations of paragraph 2 are admitted.

3. As to paragraph 3, it is admitted that plaintiff has been a stockholder of New Haven since on or about December 15, 1963, and that no effort has been made by plaintiff to secure from the managing



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directors of New Haven the relief sought herein. All remaining allegations of paragraph 3 are denied.

4. The allegations of the first two sentences of paragraph 4 are admitted except it is denied that William B. Gumbart is presently a director of New Haven. The allegations of the third sentence of paragraph 4 are denied.

5. The allegations of the first three sentences and the sixth sentence of paragraph 5 are admitted. All remaining allegations of paragraph 5 are denied.

6. As to paragraph 6, the allegations of the second sentence and the allegation that on July 10, 1963, Florida corporations in which Leon J. Simkins, Morton H. Simkins and other members of the Simkins family owned interests acquired 149,371 shares of New Haven stock are admitted. All remaining allegations of paragraph 6 are denied.

7. As to paragraph 7, it is admitted that the five corporations named in the first sentence were corporations which were organized under the laws of the State of Florida, that such corporations and Miami were wholly owned by members of the Simkins family, and that prior to February 28, 1964 Leon J. Simkins, Morton H. Simkins and Dorothy Simkins owned the amounts of stock specified in the last three sentences. All remaining allegations of paragraph 7 are denied.

8. As to paragraph 8, it is admitted that plaintiff asserts that jurisdiction exists pursuant to §1332 and that venue is proper pursuant to §1391 and all remaining allegations thereof are denied.

9-12. Insofar as paragraphs 9, 10, 11, 12 and 13 accurately repeat or restate facts appearing in New Haven's Annual Report dated February 7, 1964, and in New Haven's Notice of Annual and Special Meeting of Stockholders and Proxy Statement dated February 12, 1964, they are admitted. All remaining allegations of paragraphs 9, 10, 11, 12 and 13 are denied.

13. The allegations of paragraphs 14, 15, 16, 17 and 18 are denied.

COUNT II

1-7. The answers to paragraph 1 through 7 of Count I are hereby realleged.

8. The allegations of paragraph 8 are admitted.

9. As to paragraph 9, it is admitted that plaintiff asserts that jurisdiction exists pursuant to §1331 and that venue is proper pursuant to 15 U.S.C. §78aa and all remaining allegations thereof are denied.

10-15. The answers to paragraphs 9 through 14 of Count I are hereby realleged.

16-22. The allegations of paragraphs 16, 17, 18, 19, 20, 21 and 22 are denied.

DEFENDANTS (Other than  
Malcolm Sanders)

By S/John D. Fassett  
JOHN D. FASSETT  
Their Attorney



Appendix C-4

CERTIFICATE OF SERVICE

This is to certify that on the 4th day of March, 1966, a copy of the foregoing was mailed to Herbert L. Scharf, Esq., Bobroff, Olonoff & Scharf, 122 E. 42nd Street, New York 17, New York and Kalman A. Sachs, Esq., Sachs, Sachs, Giaimo & Sachs, 207 Orange Street, New Haven, Connecticut.

S/John D. Fassett

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JOHN D. FASSETT

## APPENDIX D

### SIMON v. NEW HAVEN BOARD & CARTON COMPANY

297

Cite as 250 F.Supp. 297 (1966)

**Jeff SIMON, as Custodian for Gail Nina Simon, Under the New York Uniform Gifts to Minors Act, Plaintiff,**

v.

**The NEW HAVEN BOARD & CARTON COMPANY, Incorporated, Edwin W. Miller, Sterling R. Chatfield and William B. Gumbart, Defendants.**

Civ. No. 10425.

United States District Court  
D. Connecticut.

Feb. 8, 1966.

Stockholder's derivative suit. On defendants' motion to dismiss for failure to state a claim upon which relief could be granted, the District Court, Zampano, J., held that rule providing that it is unlawful to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with a purchase or sale of any security, applies to a fraud upon a corporation when acting through its stockholders, and that allegations by plaintiff that value of stock issued by corporation pursuant to authorization for merger was \$2,000,000 in excess of consideration received was sufficient to constitute corporate harm essential to an action.

Motion denied.

#### 1. Corporations ⇐204

A derivative action may be brought on behalf of a corporation under rule providing that it is unlawful to engage in any act, practice, or course of business which operates or would operate as fraud or deceit upon any person in connection with the purchase or sale of any security. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

#### 2. Licenses ⇐18½(46)

Corporate issuance of stock is a "sale" within meaning of rule providing that it is unlawful to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection

with purchase or "sale" of any security. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

See publication Words and Phrases  
for other judicial constructions and  
definitions.

#### 3. Licenses ⇐18½(40)

Rule providing that it is unlawful to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with a purchase or sale of any security, applies to a fraud upon a corporation when acting through its stockholders. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

#### 4. Licenses ⇐39.36

Allegations in derivative action, that there was concealment of value of corporation's tax loss carryforward, failure to credit liquidation value of company's assets, goodwill and recent improvements, and painting of an overly pessimistic picture of corporation's future, alleged more than a breach of general fiduciary duties of corporate officers and directors; such allegations disclosed facts which involved deceit and fraud associated with sale of securities. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

#### 5. Licenses ⇐39.36

Allegation by plaintiff in stockholder's derivative action that value of stock issued by corporation pursuant to authorization for merger was \$2,000,000 in excess of consideration received was sufficient to constitute corporate harm essential to an action under rule providing that it is unlawful to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

—◆—  
Kalman A. Sachs, Sachs, Sachs, Giaimo & Sachs, New Haven, Conn., Herbert Scharf, Bobroff, Olonoff & Scharf, New York City, for plaintiff.



John D. Fassett, Wiggin & Dana, New Haven, Conn., for defendants.

ZAMPANO, District Judge.

This is a derivative suit brought on behalf of the New Haven Board & Carton Company, Incorporated ("New Haven") by plaintiff Jeff Simon, custodian for a minor who is a stockholder in the company. The defendants are members of the board of directors of the company. Named as co-conspirators but not defendants<sup>1</sup> are Leon J. Simkins, a director and President, Morton H. Simkins, a director, Executive Vice President and Treasurer, and Dorothy Simkins, another director.

The defendants move to dismiss Count II of the Second Amended Verified Complaint for failure to state a claim upon which relief can be granted. Rule 12(b)(6), Fed.R.Civ.P.

The transaction complained of concerns the acquisition by New Haven of certain Florida corporations owned by the Simkins. Plaintiff contends the merger was authorized by the shareholders of New Haven on the basis of falsified and misleading reports and proxy statements which were prepared and distributed under Simkins' direction with full knowledge of the defendants. As a result of an undervaluation of New Haven and the overvaluation of the acquired corporations the value of the stock issued by New Haven pursuant to the authorization was \$2,000,000 in excess of the consideration received. An added consequence of the merger is the Simkins now control 76% of the voting

stock of New Haven compared with 33% prior to the consolidation.

The two counts of the complaint are based on the same operative facts. The first count asserts a common law action for relief under state law and, there being diversity of citizenship, federal jurisdiction is not contested by the defendants in the instant motion.

Jurisdiction of Count II rests on Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa, granting exclusive federal jurisdiction over suits brought pursuant to the provisions of that Act. The question raised by defendants' motion is whether the facts alleged in Count II state a claim under § 10(b) of the Act, 15 U.S.C. § 78j(b), and Rule 10b-5, the general anti-fraud rule promulgated thereunder by the Securities and Exchange Commission.

Rule 10b-5 provides, *inter alia*, that it is unlawful "to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."<sup>2</sup>

[1, 2] Since its passage in 1942, Rule 10b-5 has received significant judicial amplification as a basis for civil liability. Fleischer, Federal Corporation Law: An Assessment, 78 Harv.L.Rev. 1146 (1965); Comment, Civil Liability Under Section 10B and Rule 10B-5, 74 Yale L.J. 653 (1965); Ruder, Pitfalls in the Development of a Federal Law of Corporations, 59 Nw.L.Rev. 185 (1964). It is now settled that a derivative action may be brought on behalf of the corporation under the Rule, *Fischman v. Raytheon Mfg. Co.*, 188 F.2d 783 (2 Cir.1951); *Ruckle*

1. On May 21, 1965, the Court granted without objection the motion of Leon J. Simkins, Morton H. Simkins, and Dorothy Simkins, who were named among others as defendants, to dismiss because of improper venue.

2. See 17 C.F.R. § 240.10b-5 (1964):

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud.

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

**SIMON v. NEW HAVEN BOARD & CARTON COMPANY****299**

Cite as 230 F.Supp. 297 (1966)

v. Roto American Corporation, 339 F.2d 24 (2 Cir.1964), that the corporate issuance of stock is a "sale" within the meaning of the Rule, *Ruckle v. Roto American Corporation*, supra at 27; *Hooper v. Mountain States Securities Corp.*, 282 F.2d 195, 200-203 (5 Cir. 1960), and that appropriate operative facts may support both common law and federal causes of action. *O'Neill v. Maytag*, 339 F.2d 764 (2 Cir.1964).

[3] While recognizing the current trend of the authorities, defendants argue reasonable limits would be breached if the Rule is applied to a fraud upon a corporation when acting through its stockholders. The Court disagrees. The Rule provides civil redress for damage to a corporation resulting from deception in the disclosure of information which affects corporate decisions in the purchase and sale of securities. In *Ruckle*, members of the board of directors were deceived by the fraudulent failure to disclose information; here, stockholders were. Both cases involve fraud upon the decision-making body of the corporation. The result in both is the same—*injury to the corporation*. In this Court's opinion the difference in the acting corporate body is not sufficient to warrant a result dissimilar to *Ruckle*. All information reasonably relevant to a rational investment must be disclosed to the decision-making body, whether that body be composed of directors, officers or shareholders of the corporation. See, *Eagle v. Horvath*, 241 F.Supp. 341; 241 F.Supp. 345, 347 (S.D.N.Y.1965).

*O'Neill v. Maytag*, 339 F.2d 764 (2 Cir. 1964), does not furnish the precedent which defendants seek. In that case the question posed was whether "it is sufficient for an action under Rule 10b-5 to allege a breach of \* \* \* general fiduciary duties where the breach does not involve deception." 339 F.2d at 767 (emphasis added). Since the complaint did not allege facts that demonstrated an Exchange Act fraud on the corporation, the Court of Appeals held dismissal of the action was proper.

[4] In the instant case, however, the plaintiff states facts supporting the claimed deception particularizing among other things: the failure to disclose the existence of a \$100,000 profit, the concealment of the value of New Haven's tax loss carryforward, the failure to credit the liquidation value of the company's assets, goodwill and recent improvements, and the painting of an overly pessimistic picture of New Haven's future. Clearly the complaint alleges more than a breach of the general fiduciary duties of the corporate officers and directors; it discloses facts which, taken as true for the purpose of this motion, involve deceit and fraud associated with the sale of the securities.

[5] Lastly, the defendants deny the corporation is a defrauded party. At most, it is claimed, the transaction has resulted in a dilution of the value of the individual shares which may support an individual shareholder's cause of action but does not constitute corporate harm essential to a Rule 10b-5 action. Cf. *Hoover v. Allen*, 241 F.Supp. 213, 226-229 (S.D.N.Y.1965). On the other hand, plaintiff asserts the stock issued by New Haven, \$2,000,000 in excess of the consideration received, should be treated as any other asset such as cash. *Ruckle*, citing with approval Judge Brown's statements in *Hooper v. Mountain State Securities Corp.*, 282 F.2d 195, 203, cert. denied 365 U.S. 814, 81 S.Ct. 695, 5 L.Ed.2d 693, lends clear support to plaintiff's position:

"Considering the purpose of this legislation, it would be unrealistic to say that a corporation having the capacity to acquire \$700,000 worth of assets for its 700,000 shares of stock has suffered no loss if what it gave up was \$700,000 but what it got was zero. If—as we very much doubt—accountants would support any such contention as a consequence of the esoteric mysteries of the double entry system, *Liston Zander Credit Co. v. United States*, 5 Cir., 1960, 276 F.2d 417, 422, the law with



its eye on reality would have to part company with such purists."

Another element of corporate loss is that "(i)n one sense the company has not parted with the shares; they still represent claims against it, and claims fraudulently obtained." Fleischer, Federal Corporation Law: An Appraisal, *supra*, at 1161. An unfavorable investment as the one alleged here, moreover, will often depress public capital investment in the company and make institutional borrowing more difficult or at higher rates. Thus, in a real sense the company's means of financing may be restricted as a result of the transaction.

For these reasons, defendants' motion to dismiss is denied.<sup>3</sup>

APPENDIX E



RECEIVED  
JUL 22 1963  
EX. 12 ID.

*Annual Report*

*1963*

*The New Haven  
Board & Carter Company, Inc.  
New Haven, Conn.*

Plaintiff's Exhibit 3



THE NEW HAVEN BOARD & CARTON COMPANY, INC.

TO OUR STOCKHOLDERS:

This is the first letter I have been privileged to write to stockholders since becoming President of the Company this past July. Although it is disappointing to report a loss for the year of \$831,702, this figure reflects non-recurring accounting adjustments which Management believes will place our financial reporting on a more conservative and realistic foundation. The adjustments include a write-down of \$75,000 of work-in-process and finished goods inventories and a writeoff of \$308,256 of inventory of maintenance parts and supplies. The Company also had a non-recurring gain of \$32,443 on the sale of fixed assets. Without these extraneous items, the operating loss of the Company would have been \$480,889. Moreover, a substantial portion of the Company's operating loss was attributable to the operation of the Bartgis Division which for economic reasons was shut down at the end of November.

Vigorous action has been taken by Management to place the operations of the Company on a profitable basis. In this connection, Management has been actively pursuing two goals: (1) reduction of cost through fuller utilization of our facilities and personnel and elimination of unnecessary overhead charges, and (2) expansion of the Company's business through internal growth and through acquisition of profitable companies.

In keeping with the foregoing policies, Management has taken the following action:

The Company's salaried payroll was reduced approximately 25% prior to the Bartgis shutdown and total hourly wage costs have been substantially

lowered without curtailment of productive capacity or ability to service our customers with quality merchandise. One of the great strengths of the Company has been its long standing reputation for maintaining high standards of quality and service. No reductions in our Technical, Quality Control or Sales/Service Departments have been made and it is Management's plan to further enhance its reputation for quality and service by further strengthening and building on these fine pillars of our business.

Our New York office has been closed and its personnel have been moved to New Haven. This has not only resulted in substantial savings, but has achieved centralization of all management, sales and executive functions at our main offices in New Haven.

During the past several years, the Bartgis Division has been operating at a greatly reduced capacity and its losses have continued to grow. In order to curtail these losses, Management has found it necessary to close the Bartgis Plant. In the opinion of Management, most of the folding carton volume that previously was produced by the Bartgis Division can be handled at New Haven through better utilization of our productive capacity and skills, thereby effecting considerable overall economies. The Bartgis Plant will be maintained, however, on a stand-by basis and will be available for resumption of operations in the event that business conditions so warrant.

Management has arranged to purchase and retire its \$3,000,000 note issued to the Penn Mutual Life Insurance Company on which the principal balance is \$2,100,000 for \$1,637,500 plus accrued interest. Upon the consummation of this transaction, the Company will achieve a net reduction



APPENDIX E-4

in liabilities and a concomitant gain in net worth of \$462,500 and restrictions on payment of dividends and other corporate transactions will be removed.

The lithographic needs of our customers have continued to grow, and although our affiliated company, Grinnell Lithographic, Inc. has provided excellent quality and service, Management has decided to establish supplemental facilities at New Haven. As an initial step in this direction, a four-color Miehle 76" Offset Press has been purchased and installed and is about to commence operations. With the combined facilities of New Haven and Grinnell, we will not only increase our productive capacity but be able to offer our customers a larger variety of offset equipment and obtain additional flexibility in meeting their requirements.

A most important development is the proposed merger of Miami Paper Board Mills, Inc. and Benner Box, Inc., both of Miami, Florida, with and into New Haven, the terms of which are set forth in the Proxy Statement enclosed herewith. An Agreement and Plan of Merger has already been approved by the Board of Directors of New Haven and will be presented to the stockholders for their approval at the Annual and Special Meeting. Miami and Benner which respectively manufacture paperboard and folding boxes in the State of Florida, have a concentration of sales in the fast growing Southeastern area of the United States. They have been managed by your President and Executive Vice President for many years and have achieved a growth in sales and profits which have greatly exceeded the average in the industry. The Miami Companies have very strong financial positions, with large current assets and net working capital and practically

7

no debt. They operate modern and efficient facilities, have low production costs and efficient organizations, and have shown regular and increasing profits.

The Miami Companies will provide new types of business, additional facilities and increased productive capacity which will enable New Haven to expand its business by serving the needs of its customers in the Southeastern portion of the United States, where many of New Haven's major accounts are rapidly expanding their operations. Through the integration of management, sales and executive functions of the combined companies, it is believed that substantial operating economies will be achieved. The merger will also provide a broader base for the establishment of research and development facilities, which are essential to the innovation of new products and improvement of existing ones. The merger will greatly improve New Haven's financial position, placing it in a better condition to finance the purchase of modern and improved equipment and to compete for new business. It will also provide the cash and credits necessary to consummate the purchase of the Penn Mutual Life Insurance Note mentioned previously. For all of the foregoing reasons, Management urges your support of the merger.

The Board of Directors has also approved and recommended the adoption of a Restricted Stock Option Plan, the terms of which are set forth in the Proxy Statement. Management believes that such a plan is essential not only to attract and recruit management personnel, but to provide an incentive and reward for those employees whose loyalty and devotion are necessary to the Company's success.

Management has adopted a policy of meeting regularly with the leaders of our unions in order that we may better understand each



APPENDIX E-6

other's problems, since the cooperation of all is essential to an efficient and profitable operation. We have been greatly encouraged by the intelligent and responsible approach of the union leaders and believe that they appreciate that job security and enhanced benefits to their membership depend on the most efficient use of manpower and facilities and the greatest possible productivity.

Although no meaningful prediction of sales or profits can be made at this time in view of the foregoing developments, Management is confident that with the approval of the proposed merger, the current fiscal year will be a good one, and it is its firm belief that New Haven is on the threshold of a new era of progress and profitability.

It is hoped that as many of you as possible can attend the Annual and Special Meeting on February 28 and Management looks forward to the pleasure of meeting you personally. In the event that you are unable to attend, we would appreciate your returning your Proxy in the enclosed self-addressed envelope. Since a favorable vote by the holders of at least two-thirds of the outstanding shares is required for approval of the proposed merger, it is particularly important that your Proxy be returned as promptly as possible, regardless of whether your stock holdings are large or small.

While it is a fact that efficient modern productive facilities are essential for corporate success, our most important assets are the men and women of New Haven, our fine customers, our loyal suppliers, and the guiding judgment and counsel of our Directors to whom we express our very sincere appreciation.

Respectfully,

S/Leon J. Simkins

LEON J. SIMKINS, PRESIDENT

February 7, 1964

## THE NEW HAVEN BOARD &amp; CARTON COMPANY, INC.

## NOTES TO FINANCIAL STATEMENTS

September 30, 1963

## NOTE 1-INVESTMENT IN AND PROPERTY LEASED TO AFFILIATED COMPANY:

The Company is the holder of 35% of the outstanding common stock of The Grinnell Lithographic Company, Inc. of Islip, New York, acquired on March 1, 1961. The stock of The Grinnell Lithographic Company, Inc. is closely owned and has no established market value. Financial statements of Grinnell furnished to us indicate that its fixed assets were restated to reflect an appraised valuation. The Company's interest in the stockholders' equity after such revaluation exceeds the cost of its investment.

In conjunction with the above transaction, the Company purchased the land and buildings occupied by Grinnell and leased the property back to Grinnell for a period of fourteen years with option to repurchase.

## NOTE 2-LONG-TERM DEBT:

Under the terms of a Loan Agreement with The Penn Mutual Life Insurance Company dated March 15, 1955, the Company has agreed, among other conditions, to maintain consolidated net current assets of at least \$1,500,000, and that it will not purchase its own stock or pay dividends, other than dividends payable in shares of its common stock, in excess of the consolidated retained earnings accumulated after September 30, 1952. Under these provisions, it is necessary for the Company to have future earnings of approximately \$2,375,000 before considering any cash dividend payments.

## NOTE 3-ACCOUNTING CHANGE IN INVENTORY PRICING AND METHODS:

(a) Management adopted a more conservative approach, which we approve, to applying the factor of overhead in inventories of work in process and finished goods at September 30, 1963. As a result of this change, the valuation of these inventories at September 30, 1963 was reduced by approximately \$75,000, with a corresponding increase in the net loss for the year.

(b) Inventories of Maintenance Parts and Supplies were heretofore inventoried and valued at approximate cost. Management has elected to charge off the cost of such items to operating expenses when purchased and to carry no inventory value at September 30, 1963. The effect thereof was to write off the opening book inventory amounting to \$308,256. This amount is set forth as an "extraneous item" in the current year's Statement of Income and Retained Earnings.

## NOTE 4-GUARANTY:

The Company, in connection with trucking facilities leased from an affiliated company, has guaranteed the payment of certain obligations of the affiliate amounting to \$138,700 as of September 30, 1963 (\$228,000 as of September 30, 1962). Assets pledged by the affiliate as collateral for the obligation have a value considered by the Company to be substantially in excess of the guaranteed indebtedness.

## NOTE 5-SUBSEQUENT EVENTS:

In November 1963, the Board of Directors authorized the Officers of the Corporation to take all steps necessary to effect a shut down of its Bartgis Division plant located in Ilchester, Maryland.



THE NEW HAVEN BOARD  
STATEMENT OF FIN  
September 30, 1963 :

## ASSETS

	September 30, 1963	1962
<b>CURRENT ASSETS</b>		
Cash .....	\$ 524,220	\$ 447,340
Accounts receivable, Net of allowance for losses (1963—\$38,873; 1962—\$90,959) .....	1,808,367	1,667,410
Inventories of raw materials, supplies, work in process and finished goods, at the lower of cost or market (Note 3) .....	1,365,102	2,727,242
Prepaid expenses .....	73,734	47,017
Total current assets .....	\$ 4,271,423	\$ 4,889,009
<b>OTHER ASSETS</b>		
Investment in affiliated company—at cost (Note 1) .....	321,793	321,793
Land and building leased to affiliated company— at cost, less depreciation (Note 1) .....	364,325	378,935
Miscellaneous investment—at cost .....	37,838	42,377
Deferred charges .....	12,090	13,405
Total other assets .....	\$ 736,046	\$ 756,510
<b>PROPERTY, PLANT AND EQUIPMENT—</b>		
At cost .....	15,924,872	15,853,251
Less—accumulated depreciation .....	10,729,252	10,310,551
Property, plant and equipment—net .....	5,195,620	5,542,700
	<u>\$10,203,089</u>	<u>\$11,188,219</u>

See notes to f

## ACCOUNTA

To The Board of Directors and Stockholders  
The New Haven Board & Carton Company, Inc.  
New Haven, Connecticut

We have examined the statement of financial condition of The New Haven Board & Carton Company, Inc. as of September 30, 1963, and the related statement of income and retained earnings for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

& CARTON COMPANY, INC.

## FINANCIAL CONDITION

and September 30, 1962

### LIABILITIES

	September 30,	
	1963	1962
<b>CURRENT LIABILITIES</b>		
Notes payable—bank .....	\$ 950,000	\$ 750,000
Accounts payable .....	730,168	812,909
Taxes accrued .....	216,900	246,120
Wages and expenses accrued .....	224,545	229,278
Long-term debt—due within one year .....	252,343	279,173
Total current liabilities .....	\$ 2,373,956	\$ 2,317,480
<b>LONG-TERM DEBT</b>		
(Net of current portion above)		
3% notes, payable \$150,000 annually, balance March 1975 (Note 2) .....	1,950,000	2,100,000
6% mortgage note on property leased to affiliate, payable \$8,750 quarterly (Note 1) .....	227,500	262,500
5%–5% notes, payable \$50,000 annually .....	100,000	150,000
Equipment and other notes payable .....	25,096	—
Total long-term debt .....	\$ 2,302,596	\$ 2,512,500
<b>STOCKHOLDERS' EQUITY</b>		
Common stock—par value \$10 Authorized 500,000 shares Issued and outstanding 460,353 shares .....	4,603,530	4,603,530
Capital surplus .....	662,031	662,031
Retained earnings (Note 2) .....	260,976	1,092,678
Total stockholders' equity .....	\$ 5,526,537	\$ 6,358,239
	<u>\$10,203,089</u>	<u>\$11,188,219</u>

financial statements

### FINANCIAL STATEMENTS REPORT

In our opinion, the accompanying statement of financial condition and statement of income and retained earnings present fairly the financial position of The New Haven Board & Carton Company, Inc. at September 30, 1963, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year except as to the change explained in Note 3 to the financial statements.

LEWIS SAGAL & CO.  
Certified Public Accountants

New Haven, Connecticut  
December 9, 1963



## THE NEW HAVEN BOARD &amp; CARTON COMPANY, INC.

## STATEMENT OF INCOME AND RETAINED EARNINGS

Years Ended September 30, 1963 and September 30, 1962

	Years Ended September 30,	
	1963	1962
Sales, Net of discounts, allowances and freight .....	\$20,819,048	\$21,331,590
Costs and expenses		
Cost of goods sold (Note 3) .....	19,467,351	19,354,630
Selling, administrative, and general expenses .....	1,791,047	1,932,868
	<u>21,258,398</u>	<u>21,287,498</u>
Income or (loss) from operations .....	(439,350)	44,092
Other deductions—net		
Interest expense .....	143,515	151,754
Less—miscellaneous income .....	26,976	26,630
Other deductions—net .....	<u>116,539</u>	<u>125,124</u>
(Loss) before extraneous items .....	(555,889)	(81,032)
(Loss) resulting from charge off of maintenance parts and supplies inventories (Note 3) .....	(308,256)	—
Gain on sales of fixed assets .....	<u>32,443</u>	<u>806</u>
Net (loss) .....	(831,702)	(80,224)
Retained earnings, beginning of year .....	<u>1,092,678</u>	<u>1,172,902</u>
Retained earnings, end of year .....	<u>\$ 260,976</u>	<u>\$ 1,092,678</u>
Depreciation charged to operations .....	\$ 529,673	\$ 534,283

See notes to financial statements

## THE NEW HAVEN BOARD &amp; CARTON COMPANY, INC.

*Directors*Leon J. Simkins, *Chairman*

Sterling R. Chatfield	Edwin W. Miller
William B. Gumbart	Malcolm Sanders
Charles R. Hailey	Jacob J. Siegal
John L. McCreery	Dorothy Simkins
Leon Meltzer	Morton H. Simkins

*Officers*

Leon J. Simkins	President
Morton H. Simkins	Executive Vice President and Treasurer
Francis S. Wakeman	Senior Vice President
Harry M. Bull	Vice President
Jacob J. Siegal	Secretary
William S. Medinger	Controller
Harold A. Wilson	Assistant Secretary

*Executive and General Sales Offices*

259 East Street, New Haven, Connecticut 06508

*Plants*

New Haven, Connecticut  
 Ilchester, Maryland  
 Richmond, Virginia  
 West Hempstead, Long Island, N. Y.

*Auditors*

Lewis Sagal & Co., Certified Public Accountants  
 152 Temple Street, New Haven, Connecticut 06510

*Counsel*

Gumbart, Corbin, Tyler & Cooper  
 205 Church Street, New Haven, Connecticut 06509  
 Baldwin, Jarman & Norris  
 Fidelity Building, Baltimore, Maryland 21201

*Transfer Agent*

The First New Haven National Bank  
 1 Church Street, New Haven, Connecticut 06502



APPENDIX F

NOTICE OF ANNUAL AND SPECIAL MEETING OF STOCKHOLDERS  
of  
THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED

FEBRUARY 28, 1964

TO THE STOCKHOLDERS:

NOTICE IS HEREBY GIVEN that an Annual and Special Meeting of the Stockholders of The New Haven Board & Carton Company, Incorporated, will be held on Friday, February 28, 1964 at 10 o'clock in the forenoon, at the Taft Hotel, New Haven, Connecticut, for the following purposes:

- (1) To elect Directors for the ensuing year.
- (2) To consider and take action with respect to the approval and adoption of the Agreement and Plan of Merger dated January 16, 1964, between The New Haven Board & Carton Company, Incorporated, Miami Paper Board Mills, Inc., a Florida corporation, and Benner Box, Inc., a Florida corporation, which Agreement provides for the merger of Miami Paper Board Mills, Inc., Benner Box, Inc. and their subsidiary corporations with and into The New Haven Board & Carton Company, Incorporated, upon the terms and subject to the conditions contained in said Agreement and Plan of Merger, a copy of which is attached as Exhibit "A" to the within Proxy Statement, and upon any other matters relating or incident to the proposed merger.
- (3) To consider and take action with respect to the approval and adoption of a Restricted Stock Option Plan; and
- (4) To transact such other business as may properly come before the meeting or any adjournment thereof.

Only those Stockholders of the Company of record as of Friday, <sup>Feb 10</sup> January 31, 1964, will be eligible to vote at the meeting or any adjournment or adjournments thereof.

It is important that your stock be represented at the meeting. If you do not plan to attend the meeting in person, you are urged to sign, date and mail the enclosed Proxy immediately.

By Order of the Board of Directors

New Haven, Conn.  
February 12, 1964.

/s/ JACOB J. SIEGAL  
Secretary

THE AFFIRMATIVE VOTE OF THE HOLDERS OF TWO-THIRDS OF THE TOTAL NUMBER OF THE OUTSTANDING SHARES OF THE COMMON STOCK OF THE COMPANY IS REQUIRED FOR THE APPROVAL OF THE MERGER.

## Appendix F-2

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## THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED

### PROXY STATEMENT

This statement is furnished to the holders of shares of Common Stock of THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED ("New Haven"), in connection with the solicitation of proxies by the Management of New Haven for use at the Annual and Special Meeting of Stockholders to be held at the Taft Hotel, New Haven, Connecticut on February 28, 1964, at 10:00 o'clock in the forenoon, and at any adjournment or adjournments thereof.

Among the matters to be considered and acted upon at the Stockholders Meeting is the approval and adoption of an Agreement and Plan of Merger, merging Miami Paper Board Mills, Inc. and its wholly-owned subsidiary, Simkins Properties, Inc., Florida corporations ("Miami") and Benner Box, Inc. and its wholly-owned subsidiary, Samson Properties, Inc., Florida corporations ("Benner") (said corporations being sometimes hereinafter called "Miami Companies") with and into New Haven which shall be the surviving company in the merger and shall continue its corporate existence as a Connecticut corporation under its present charter, as modified and restated by said Agreement and Plan of Merger ("Surviving Company"). A copy of the Agreement and Plan of Merger ("Agreement") is set forth in full in Exhibit "A" attached hereto.

In addition to the merger of the Miami Companies into New Haven, the present activities and personnel of four affiliated companies, Benner Box Sales, Inc. ("Box"), Miami Paper Board Sales, Inc. ("Sales"), Tropical Board Sales, Inc. ("Tropical") and Dixie Printing Ink, Inc. ("Dixie"), all Florida Corporations, will be transferred to New Haven.

Also to be considered and acted upon at the Stockholders' Meeting is a Restricted Stock Option Plan for the purpose of enabling New Haven to obtain and retain key executive employees.

The Board of Directors of New Haven, at a meeting held on January 16, 1964, approved (a) the Agreement and Plan of Merger, and (b) a Restricted Stock Option Plan, both subject to approval of stockholders.

The Boards of Directors of Miami and Benner, at meetings held on January 16, 1964, approved the Agreement and Plan of Merger. On February 3, 1964, the stockholders of Miami and Benner unanimously approved, adopted and ratified the Agreement and Plan of Merger.

### **BUSINESS AND PROPERTIES OF NEW HAVEN**

New Haven was incorporated in the State of Connecticut as "The New Haven Pulp & Board Company," on January 18, 1901. Its name was changed to "The New Haven Board & Carton Company, Incorporated," on January 30, 1961.

New Haven manufactures paperboard, converted paperboard products, folding cartons and corrugated containers, which it sells primarily in the Northeastern area of the United States. It caters to a wide diversification of industries and has long been an important factor in the areas it serves.

#### **Appendix F-4**

New Haven owns and operates plants at New Haven, Connecticut, in which it manufactures paperboard and folding cartons in buildings containing approximately 400,000 square feet. The paperboard manufacturing capacity at this plant is 200 tons per day. The Bartgis Division of New Haven, at Ilchester, Maryland has a paperboard manufacturing capacity of approximately 150 tons per day, and complete folding carton manufacturing facilities located in buildings owned by New Haven containing approximately 200,000 square feet. At West Hempstead, New York, New Haven operates the W. W. Fitzhugh Division which has complete manufacturing facilities for all types of corrugated shipping containers and corrugated display items, located in a one-story plant containing approximately 75,000 square feet, which is occupied under a lease expiring in 1974. At Richmond, Virginia, New Haven operates a folding carton plant which specializes in the manufacture of flip-top cigarette cartons, located in approximately 8,000 square feet of leased space. New Haven also owns a 35% interest in The Grinnell Lithographic Company, Inc. located at Islip, New York, which engages in offset printing of labels and posters in a one-story building containing approximately 65,000 square feet, which is owned by New Haven and leased to Grinnell.

New Haven maintains product research and development departments and generally sells its products directly to its customers through its own sales organization.

#### **BUSINESS AND PROPERTIES OF MIAMI COMPANIES**

##### **Miami**

Miami was incorporated in the State of Florida as Miami Mills, Inc., on October 31, 1939. Its name was changed to Miami Paper Board Mills, Inc., on July 29, 1946.

Miami is presently the only paperboard mill manufacturing folding and set-up box board in the State of Florida. In 1946, when the present management acquired control of Miami, its paperboard production was approximately 25 tons a day. Its production has increased regularly each year since 1946 through the addition of new and improved equipment, and it now produces approximately 85 tons a day.

Miami occupies a complex of modern, well designed, one-story buildings containing approximately 70,000 square feet, located on a site of approximately 14 acres in a highly industrialized section of Miami, Florida, within one mile from the Miami International Airport, which properties it leases from Simkins Properties, Inc. and Samson Properties, Inc., its and Benner's wholly owned subsidiaries, respectively, and from Lesado, Inc., an affiliated company.

Miami operates complete facilities for the manufacture of paperboard including one 7 cylinder board machine, its own machine shop, water system and power generating plant. Its machinery and equipment is modern, efficient and well maintained and compares favorably with equipment used by competitive companies. A large portion of the equipment has been designed and built by Miami's Engineering Department. Miami also maintains a fleet of modern trucks, tractors and automotive equipment, a small portion of which is leased from Tropical Systems, Inc., an affiliated company.

The entire output of Miami is sold through Miami Paper Board Mills Sales, Inc. ("Sales"), and Tropical Board Sales, Inc. ("Tropical"). The sales companies sell approximately two-thirds thereof to Benner. The balance is sold to folding and set-up paper box plants and paper tube manufacturers located throughout the Southeastern area of the United States, and in Latin American countries. All of these products are sold directly to its customers except for a minor portion, which is sold through paper board distributors. Upon



consummation of the merger, the activities and personnel of Sales and Tropical will be transferred to New Haven.

Miami is a closely held corporation, all of the stock of which is owned by members of the Simkins family. Leon J. Simkins owns directly and beneficially approximately 51.33% of the Common Stock and approximately 12% of the Preferred Stock. Morton H. Simkins owns directly and beneficially approximately 26.33% of the Common Stock and approximately 12% of the Preferred Stock. Dorothy Simkins owns directly and beneficially 4% of the Preferred Stock.

#### **Benner**

Benner was incorporated in the State of Florida, on January 14, 1950, and is the successor in interest to the oldest folding carton manufacturer in the State of Florida.

Benner is the largest producer of folding paper boxes in the State of Florida and manufactures a wide variety of cartons for all types of industries. Since the Simkins family acquired control, in January 1950, its productive capacity and sales have increased each year.

Benner occupies modern, well designed, one-story buildings containing approximately 175,000 square feet of space on approximately six acres of land situated adjacent to the property occupied by Miami, which it leases from Samson Properties, Inc., its wholly owned subsidiary. It owns approximately 75% to 80% of its operating machinery and equipment, and leases the balance from Machinery Rental & Equipment Company, Inc., an affiliated company. All of its machinery and equipment is modern, efficient and well maintained and compares favorably with equipment used by competitive companies. Benner also maintains a fleet of modern trucks, tractors, and automotive equipment, a small portion of which is leased from Tropical Systems, Inc., an affiliated company. It maintains facilities for both rail and truck shipments on the premises.

Benner primarily serves the textile and food industries located throughout the Southeastern and Southwestern portions of the United States and Puerto Rico. Benner sells all of its products direct to its customers through Benner Box Sales, Inc. ("Box"), an affiliated sales company which has employees and sales representatives in approximately twelve states. Upon consummation of the merger, the activities and personnel of Box and Dixie Printing Ink, Inc. (which supplies Benner's ink requirements) will be transferred to New Haven.

The folding paper box industry is a highly competitive industry, but Benner has improved its sales and profit position annually.

Benner is a closely held corporation, all of the stock of which is owned by members of the Simkins family. Leon J. Simkins owns directly and beneficially approximately 56% of the Common Stock, and Morton H. Simkins owns directly and beneficially approximately 22% of the Common Stock.

### **REASONS FOR THE MERGER AND OPINION OF EXPERTS**

#### **Opinion of Management**

The New Haven Board of Directors has unanimously approved the proposed merger and has recommended its approval by the stockholders. In the opinion of Management, the following are the principal reasons for and benefits to be obtained from the merger.

## Appendix F-6

Many of New Haven's customers have plants in the Southeastern area of the United States and are expanding their operations in that area. The acquisition of the Miami and Benner facilities will enable New Haven to better serve its customers' requirements and possibly to obtain a larger share of the market. At the present time, New Haven has some accounts in the South which it may serve more profitably through the production of the required products at Miami. Similarly, Benner has accounts in the New England, New York and Baltimore areas which may be more profitably served by manufacturing the required products at New Haven.

Through the integration of management, and the purchasing and sales operations of the combined companies, it is believed that substantial operating economies will be achieved.

The combination of the New Haven and Miami operations will enable it to establish a common Research and Development Department to develop new and improved products which are essential to New Haven's efforts to advance in today's competitive market.

New Haven's financial position will be greatly strengthened through the merger. New Haven has been sustaining losses continuously for the past 7 years, thereby placing a great strain on its finances. As a result of the merger, New Haven will be placed in a more favorable position to purchase additional productive equipment and to compete for new business.

On March 15, 1955, New Haven borrowed from Penn Mutual Life Insurance Company \$3,000,000, on which the unpaid balance in December, 1963 was \$2,100,000, amortizable at the rate of \$150,000 per year. On December 31, 1963, Simco Waste Paper, Inc., a company affiliated with the Miami Companies, entered into an agreement with Penn Mutual Life Insurance Company to purchase the Note for \$1,660,687. It paid on account of the purchase price \$423,187, on December 31, 1963, and \$900,000, on January 7, 1964, leaving a principal balance of \$337,500. The sum of \$168,750 is due on or before June 30, 1964 and an equal amount is due on or before December 31, 1964, plus five per cent (5%) interest per annum on unpaid balances. Simco Waste Paper, Inc. has agreed to sell the Note to New Haven at its cost which is approximately \$440,000 below face, and New Haven's Board of Directors has approved the purchase. The cash and credits required to purchase the Note will become available as soon as the merger is effective. Elimination of the Penn Mutual Life Insurance Company Note from the New Haven balance sheet will greatly improve New Haven's financial standing and will eliminate other restrictions on New Haven's ability to make advantageous borrowings or to declare and pay dividends.

### INDEPENDENT APPRAISAL—AMERICAN APPRAISAL COMPANY

The American Appraisal Company of Milwaukee, Wisconsin, one of the oldest and most prominent appraisal firms in the country, made an investigation and appraisal of the Miami Companies. After investigation and analysis of the financial information concerning the Miami Companies and inspection of their properties, the American Appraisal Company valued the Miami Companies at the sum of \$6,200,000, allocating \$4,000,000 to Miami and its wholly owned subsidiary, giving effect to the operations of its affiliated sales companies (the activities and personnel of which will be transferred to New Haven upon the merger); and allocating \$2,200,000 to Benner and its wholly owned subsidiary, giving effect to the operations of its affiliated sales company and affiliated ink supplier (the activities and personnel of which will be transferred to New Haven upon the merger). The final appraisal of the American Appraisal Company is set forth in its letter, dated January 21, 1964, which follows, and a complete copy of the American Appraisal Company report is on file at the offices of New Haven and is available during regular business hours for inspection by stockholders.



Appendix F-7

The American Appraisal Company's report of its independent appraisal of the fair market value of the Miami Companies is too voluminous to incorporate in full in the Proxy Statement. However, the extent and nature of its study is indicated in its covering letter which follows:

THE AMERICAN APPRAISAL COMPANY  
INVESTIGATIONS — VALUATIONS — REPORTS

General Office  
Milwaukee 1, Wisconsin

January 21, 1964

MR. L. J. SIMKINS  
President  
BENNER BOX, INC., and  
MIAMI PAPER BOARD MILLS, INC.  
Miami, Florida

DEAR SIR:

In accordance with your authorization we have made an investigation and appraisal of Miami Paper Board Mills, Inc., Benner Box, Inc. and subsidiary companies, and submit herewith the report on our findings.

The appraisal was made for the purpose of expressing an opinion of the fair market value of the designated business enterprises as of August 31, 1963. The term "fair market value" as used herein is defined as being the amount at which the respective business enterprises would exchange between a willing buyer and a willing seller with equity to both.

The opinion of value cited herein represents an opinion of the fair market value of the capital stock of the two companies, including their wholly-owned subsidiaries, under the presumption that all stated liabilities will be assumed by the buyer. Furthermore, it is our understanding that, in any sale or merger, all of the functions of the affiliated companies, Miami Paper Board Mills Sales, Inc., Tropical Board Sales, Inc., Benner Box Sales, Inc., and Dixie Printing Ink, Inc. will be transferred to, and assumed by Miami Paper Board Mills, Inc. and Benner Box, Inc., but that neither the capital stock nor the assets of these affiliated companies would be transferred, and the appraised value reported herein is based upon this principle.

We were furnished individual audit reports of each company, prepared by Weber, Thompson & Lefcourt, Certified Public Accountants, Miami, Florida, together with financial and other information prepared by company personnel, and all of this information has been accepted, without further audit, as correctly reflecting business operations and conditions.

The appraisal report comprises:

This introductory letter which identifies the property under appraisal, describes the principles of valuation and presents the conclusion of value.

A report section containing a history and review of company operations, an analysis of financial status and earnings, a presentation in detail of the method of valuation, and a conclusion of value.

## Appendix F-8

### Explanatory exhibits comprising:

Exhibit A—Balance Sheet, Calendar Years 1959-62 and as at Aug. 31, 1963. Miami Paper Board Mills, Inc.

Exhibit B—Comparative Statement of Income, Calendar Years, 1958-62; twelve months ended Aug. 31, 1963. Miami Paper Board Mills, Inc.

Exhibit C—Balance Sheet, Calendar Years 1958-62. Simkins Properties, Inc.

Exhibit D—Comparative Statement of Income, Calendar Years 1958-62. Simkins Properties, Inc.

Exhibit E—Comparative Statement of Income, Fiscal Years ended August 31, 1959-63. Miami Paper Board Mills Sales, Inc.

Exhibit F—Comparative Statement of Income, Fiscal Years ended August 31, 1959-63. Tropical Board Sales, Inc.

Exhibit G—Balance Sheet, Fiscal Years ended August 31, 1959-63. Benner Box, Inc.

Exhibit H—Comparative Statement of Income, Fiscal Years ended August 31, 1959-63. Benner Box, Inc.

Exhibit I—Balance Sheet, Calendar Years 1958-62. Samson Properties, Inc.

Exhibit J—Comparative Statement of Income, Calendar Years 1958-62. Samson Properties, Inc.

Exhibit K—Comparative Statement of Income, Fiscal Years ended November 30, 1961-62. Dixie Printing Ink, Inc.

Exhibit L—Comparative Statement of Income, Fiscal Years ended August 31, 1959-63. Benner Box Sales, Inc.

Exhibit M—Financial Statistics, Comparative Companies.

The appraisal investigation included a personal inspection of the property and operations of the several companies, and consultation with management concerning historical and prospective operations and related matters. The opinion of value expressed herein is based primarily upon consideration of:

The history of the companies, nature of business operations, their financial position, and historical and prospective net profit and cash flow.

The character, physical condition, and utility of the plant assets.

The value indicated by capitalization of net profit and cash flow, at rates of return developed by analysis of similar companies whose stocks are publicly traded.

The fair market value of non-operating property.



Appendix F-9

Based upon the investigation as outlined above, it is our opinion that the fair market value of the designated enterprises, appraised as of August 31, 1963, in accordance with the principles and limiting conditions previously defined, is:

Miami Paper Board Mills Group	\$4,000,000
Benner Box Group	\$2,200,000

We have made no investigation of and assume no responsibility for the title to, or any liabilities against, the property appraised.

Respectfully submitted,

THE AMERICAN APPRAISAL COMPANY

/s/ C. E. O. WALKER  
Assistant Vice President

January 21, 1964

**BASIS OF MERGER**

Approval of the merger by the stockholders will result in the following transactions:

The par value of New Haven's Common Stock will be reduced to \$1.00 from \$10.00 and there will be an accounting transfer of \$4,143,177 from authorized capital to capital surplus. Concurrently, the authorized Common Stock of New Haven will be increased to 2,000,000 shares from 500,000 shares.

The 460,353 shares of Common Stock of New Haven, presently issued and outstanding, including treasury stock, will be retained by the holders of said shares and will represent, upon consummation of the merger, 460,353 shares of Common Stock, \$1.00 par value, of the Surviving Company.

New Haven, at the same time, will issue 1,377,774 shares of its Common Stock, \$1.00 par value, in exchange for all of the authorized and issued Common and Preferred Stock of the Miami Companies, in accordance with the valuations established by the American Appraisal Company, as set forth above.

New Haven will be the Surviving Company and its corporate name will remain unchanged. The separate corporate existences of the Miami Companies will be terminated and all of their assets and liabilities will become vested in New Haven. It is contemplated that New Haven will operate the businesses of the Miami Companies, including the activities of the affiliated companies to be transferred to New Haven, as separate divisions of New Haven and the business names of the Miami Companies may be retained for use in connection with their activities.

The Agreement when filed will become the Amended Certificate of Incorporation of New Haven and the merger will be effective.

# Appendix F-10

## SUMMARY OF COMPARATIVE FINANCIAL DATA

The following comparative financial data has been prepared from the pertinent financial statements of THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED and the MIAMI COMPANIES (including the sales and earnings of the affiliated companies whose activities will be acquired by New Haven).

### PRE-TAX EARNINGS

		New Haven	New Haven Earnings Per Share	Miami Earnings		
1963.....		\$(834,702)	\$(1.80)	\$1,038,028 (est.)		
1962.....		(80,224)	(.17)	796,598		
1961.....		(190,677)	(.41)	630,058		
1960.....		(777,841)	(1.69)	394,008		
1959.....		(770,262)	(1.67)	411,246		
5 Year Average.....		(530,141)	(1.15)	653,987		
	Fiscal Year Ends	1963	1962	1961	1960	1959
<b>Combined Pre-Tax Earnings</b>						
Miami Paper Board Mills, Inc....	Dec. 31	\$ 500,000*	\$ 396,031	\$ 284,448	\$ 157,445	\$ 138,258
Benner Box, Inc.....	Aug. 31	279,233	194,447	150,399	75,082	115,538
Simkins Properties, Inc.....	Dec. 31	28,000*	24,477	28,602	29,119	31,785
Samson Properties, Inc.....	Dec. 31	36,000*	35,432	29,713	24,968	34,829
Miami Paper Board Mills Sales, Inc.....	Aug. 31	97,881	53,377	54,628	37,575	46,164
Tropical Board Sales, Inc.....	Aug. 31	43,676	41,637	55,111	45,558	14,595
Benner Box Sales, Inc.....	Aug. 31	29,489	34,335	27,620	24,261	30,077
Dixie Printing Ink, Inc.....	Nov. 30	23,749	16,862	(463)	(X)	(X)
<b>TOTAL.....</b>		<b>\$1,038,028</b>	<b>\$ 796,598</b>	<b>\$ 630,058</b>	<b>\$ 394,008</b>	<b>\$ 411,246</b>

\* Estimated December 31, 1963.

(X) Not operating in present function.

### Combined Net Worth of the Miami Companies

Miami Paper Board Mills, Inc....	Dec. 31	\$1,403,486	\$1,103,318	\$ 904,494	\$ 763,623	\$ 681,398
Benner Box, Inc.....	Aug. 31	536,920	377,381	278,546	184,309	141,816
Simkins Properties, Inc.....	Dec. 31	220,564	202,492	185,358	166,129	146,652
Samson Properties, Inc.....	Dec. 31	290,900	269,174	246,667	226,905	209,427
<b>TOTAL.....</b>		<b>\$2,451,870*</b>	<b>\$1,952,365</b>	<b>\$1,615,065</b>	<b>\$1,340,966</b>	<b>\$1,179,293</b>

\* November 30, 1963.



# Appendix F-11

## Combined Sales (Gross)

Miami Paper Board Mills Sales, Inc.*	Aug. 31	\$2,326,532	\$2,371,400	\$2,194,149	\$1,888,855	\$1,935,530
Tropical Board Sales, Inc.	Aug. 31	72,328	200,351	147,714	157,331	321,242
Benner Box, Inc.	Aug. 31	3,559,952	3,089,307	2,664,227	2,572,701	2,359,955
Dixie Printing Ink, Inc.	Nov. 30	50,667	49,180	22,970	(X)	(X)
TOTAL		\$6,009,479	\$5,710,238	\$5,029,060	\$4,618,887	\$4,616,727

\* Inter-company sales by Miami Paper Board Mills, Inc. to Miami Paper Board Mills Sales, Inc. have been eliminated.  
(X) Not engaged in present function.

## COMPARATIVE SALES

(In Thousands of Dollars)

	NEW HAVEN			MIAMI*			Percentage Earned on Sales
	Net Sales	Increase or (Decrease)	%	Gross Sales	Increase or (Decrease)	%	
1963	\$20,819	\$ (513)	(2.4%)	\$6,009	\$299	5.2%	17.1%
1962	21,332	(264)	(1.2%)	5,710	681	13.5%	13.9%
1961	21,596	(3,038)	(12.3%)	5,029	410	9.0%	12.6%
1960	24,634			4,619			8.5%
Increase or (Decrease) between years		(3,815)			1,390		
% of Increase or (Decrease)			(15.5%)			30.1%	

\* See Combined Sales (Gross) above for list of companies.

## Appendix F-12

## BALANCE SHEET COMPARISON

(In Thousands of Dollars)

	New Haven Board & Carton Company	Miami, Benner and Subsidiaries	Pro Forma Total**
	Date		
	Sept. 30, 1963	Nov. 30, 1963	
Cash and Government Securities.....	\$ 524	\$ 1,057	\$ 1,581
Receivables.....	1,808	1,306	3,114
Inventories.....	1,865	140	2,005
Prepaid Expense.....	74	39	113
<b>TOTAL CURRENT ASSETS.....</b>	<b>\$ 4,271</b>	<b>\$ 2,542</b>	<b>\$ 6,813</b>
<b>OTHER ASSETS.....</b>	<b>736*</b>	<b>26</b>	<b>762</b>
Fixed Assets.....	15,925	1,771	17,696
Less: Depreciation.....	10,729	1,039	11,768
<b>Net Fixed Assets.....</b>	<b>\$ 5,196</b>	<b>\$ 732</b>	<b>\$ 5,928</b>
<b>TOTAL ASSETS.....</b>	<b>\$10,203</b>	<b>\$ 3,300</b>	<b>\$13,503</b>
Current Long-Term Debt.....	\$ 252	—	\$ 252
Notes Payable.....	950	\$ 100	1,050
Accounts Payable.....	730	296	1,026
Other Payables.....	402	74	476
Federal and State Income Taxes.....	40	378	418
<b>TOTAL CURRENT LIABILITIES.....</b>	<b>\$ 2,374</b>	<b>\$ 848</b>	<b>\$ 3,222</b>
Long-Term Debt.....	2,303	—	2,303
Preferred Stock.....	—	50	—
Common and Surplus.....	5,526	2,402	7,978
<b>TOTAL.....</b>	<b>\$10,203</b>	<b>\$ 3,300</b>	<b>\$13,503</b>
Net Working Capital.....	1,897	1,694	3,591
Ratio of Current Assets to Current Liabilities.....	1.8 to 1	3.0 to 1.0	2.1 to 1
Working Capital as % of Sales.....	9.1%	28.2%	13.3%
Fixed Assets as % of Sales.....	25.0%	12.2%	21.9%
Inventories as % of Sales.....	9.0%	2.3%	7.4%
<b>Capitalization</b>			
Long-Term Debt.....	29.4%	—	22.4%
Preferred Stock.....	—	2.0%	—
Common and Surplus.....	70.6%	93.0%	77.6%
<b>TOTAL.....</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

\* Principally Grinnell Lithographic—Investment.

\*\* As if combined immediately upon merger and as if Balance Sheets are substantially the same as at the dates stated.



## NET WORTH AND TOTAL CAPITALIZATION

	New Haven Board & Carton Company	Percent Return on	Miami Comp-nies	Percent Return on
		(In Thousands of Dollars)		
NET WORTH—YEAR ENDING—				
(Preferred and Common)				
1963.....	\$5,526	Deficit	\$2,452	42.3%
1962.....	6,358	Deficit	1,952	40.8%
1961.....	6,438	Deficit	1,615	39.1%
1960.....	6,629	Deficit	1,340	29.3%
1959.....	7,182	Deficit	1,179	34.8%
1959-1963—5 Year Average.....	6,426	Deficit	1,707	38.0%
TOTAL CAPITALIZATION—YEAR ENDING—				
1963.....	7,829	Deficit	2,452	42.3%
1962.....	8,871	Deficit	1,952	40.8%
1961.....	9,180	Deficit	1,615	39.1%
1960.....	9,267	Deficit	1,340	29.3%
1959.....	9,982	Deficit	1,179	34.8%
1959-1963—5 Year Average.....	9,026	Deficit	1,707	38.0%

## Appendix F-14

### CAPITALIZATION

As of the Record Date, the capitalizations of the New Haven and Miami Companies were respectively as follows:

Class	Authorized	Outstanding
New Haven Common—\$10.00 par value .....	500,000 shs.	460,353 shs.*
Miami 6% Non-Cumulative, Non-Participating Preferred stock —\$100.00 par value .....	500 shs.	500 shs.
Miami Common—No par value .....	300 shs.	300 shs.
Benner Common—No par value .....	50 shs.	50 shs.

### PRO FORMA CAPITALIZATION

The Pro Forma Capitalization of the Surviving Company as of the Record Date, after giving effect to the proposed merger, would be as follows:

Class	Authorized	Outstanding
\$1.00 par value .....	2,000,000 shs.**	1,838,127 shs.*

\* Includes 2,016 shares held by New Haven in its treasury.

\*\* Includes 50,000 shares to be reserved for issuance pursuant to Restricted Stock Option Plan.

### MARKET PRICE OF NEW HAVEN STOCK

The Common Stock of New Haven is traded on the Over-the-Counter market. The high and low bid and asked quotations for the periods through January 31, 1964, were as follows:

		Bid	Asked
1959 .....	High	12 $\frac{1}{2}$	13 $\frac{1}{4}$
	Low	6 $\frac{1}{2}$	7
1960 .....	High	7 $\frac{3}{4}$	8 $\frac{1}{4}$
	Low	4 $\frac{1}{2}$	5
1961 .....	High	7 $\frac{1}{2}$	8
	Low	5	5 $\frac{1}{2}$
1962 .....	High	6 $\frac{1}{8}$	6 $\frac{5}{8}$
	Low	2 $\frac{1}{8}$	2 $\frac{1}{2}$
1963 (First Quarter) .....	High	4 $\frac{1}{2}$	5
	Low	2 $\frac{7}{8}$	3 $\frac{3}{8}$
(Second Quarter) .....	High	4 $\frac{5}{8}$	5 $\frac{1}{8}$
	Low	3 $\frac{1}{4}$	3 $\frac{3}{4}$
(Third Quarter) .....	High	5	5 $\frac{1}{2}$
	Low	3 $\frac{3}{4}$	4 $\frac{1}{4}$
(Fourth Quarter) .....	High	4 $\frac{3}{4}$	5 $\frac{1}{4}$
	Low	3 $\frac{3}{4}$	4 $\frac{1}{4}$

The high and low bid and asked quotation of New Haven Common Stock on January 15, 1964, the last trade date preceding approval of the Agreement by the Board of Directors of New Haven was:

	Bid	Asked
January 15, 1964 .....	4 $\frac{1}{2}$	5 $\frac{1}{4}$



# INTEREST OF OFFICERS AND DIRECTORS IN CERTAIN TRANSACTIONS

On July 10, 1963, Leon J. Simkins and Morton H. Simkins and other members of the Simkins family, through affiliated Florida corporations, acquired from Albemarle Paper Company and other stockholders of New Haven 149,371 shares of New Haven Common Stock. Thereafter, Leon J. Simkins, as Chairman, and Morton H. Simkins, Dorothy Simkins and certain other present directors designated by them, were elected to New Haven's Board of Directors. In August 1963, Leon J. Simkins was elected President and Morton H. Simkins Executive Vice President and Treasurer of New Haven.

As a result of direct and indirect ownership of New Haven's Common Stock, Leon J. Simkins and Morton H. Simkins may be deemed to have effective control of the Board of Directors and management of New Haven.

The following corporations, all or substantially all of the capital stock of which is owned by Leon J. Simkins, Morton H. Simkins, Dorothy Simkins and other members of the Simkins family, have had and may continue to have business transactions with the Miami and Benner Divisions of New Haven after consummation of the merger.

Simco Waste Paper Co., Inc., ("Simco") a Florida corporation, leases approximately 10,000 square feet of ground from Simkins Properties, Inc., for an annual rental of \$3,000 under a lease expiring December 31, 1973. Simco and its wholly-owned subsidiary, Seaboard Paper Stock, Inc., a Florida corporation, both of which are engaged in the business of grading and baling waste paper, supply approximately 40% to 50% of Miami's waste paper requirements. It is anticipated that Miami will continue its purchases from these companies provided terms and conditions remain at least as favorable as those obtainable from other suppliers.

Machinery Rental & Equipment, Inc., a Florida corporation, leases paper box machinery and equipment to Benner under various leases. All of said leases are under terms and conditions at least as favorable to Benner as leases by said lessor to unrelated third parties, and are on terms at least as favorable as those which could be obtained by Benner from any unrelated lessor. The machinery and equipment leased by Benner from Machinery Rental & Equipment, Inc., constitutes about 15% to 20% of its machinery and equipment.

Lesado, Inc., a Florida corporation, owns and leases to Miami approximately one acre of land, together with buildings and improvements, at an annual rental of \$18,000, under the terms of a lease expiring April 1, 1967. At the expiration of the lease, Miami has the option to renew for an additional period of ten (10) years at the same annual rental.

Tropical Systems, Inc., a Florida corporation, owns and leases trucks, tractors and automotive equipment to both Miami and Benner. Together, Miami and Benner lease approximately 10% to 15% of their automotive equipment from Tropical Systems, Inc. All of the leases from Tropical Systems, Inc. are on terms and conditions at least as favorable to the lessees as comparable arrangements between unrelated parties.

Service Container, Inc., a Florida corporation, is engaged in the manufacture of corrugated cartons used for shipping purposes. It subleases approximately 3,000 square feet of space from Benner, for which it pays \$3,000 per annum, under the terms of a lease expiring December 31, 1973. The terms of the lease are at least as favorable to Benner as comparable leases of space for comparable facilities in the locality. Service Container, Inc. supplies all of Benner's corrugated shipping carton requirements at prices comparable to competitive prices in the Miami area.

#### EFFECTIVE DATE OF MERGER

The merger will become effective on the filing of the Agreement with the proper authorities of the State of Connecticut and the State of Florida. The Agreement, however, provides that it may be terminated prior to the effective date upon the occurrence of certain events set forth therein.

#### MANAGEMENT OF SURVIVING COMPANY

##### Directors

The first directors of the Surviving Company will be the directors of New Haven elected by the stockholders at the Annual Meeting, whose names shall be inserted in the Agreement prior to filing. Management will nominate, for re-election and the proxy holders, unless otherwise directed, intend to vote for, the present directors of New Haven, who are:

Sterling R. Chatfield .....	New Haven, Connecticut
William B. Gumbart .....	New Haven, Connecticut
Raymond Haley .....	Richmond, Virginia
John L. McCreery .....	Philadelphia, Pennsylvania
Leon Meltzer .....	Philadelphia, Pennsylvania
Edwin W. Miller .....	New Haven, Connecticut
Malcolm Sanders .....	New York, New York
Jacob J. Siegal .....	Philadelphia, Pennsylvania
Dorothy Simkins .....	Philadelphia, Pennsylvania
Leon J. Simkins .....	Miami, Florida
Morton H. Simkins .....	Philadelphia, Pennsylvania

##### Officers

The Officers of New Haven will be the officers of the Surviving Company.

Leon J. Simkins, Chairman of the Board and President of New Haven, and Morton H. Simkins, Executive Vice President and Treasurer of New Haven, have been serving in those capacities without salary. They have been receiving aggregate annual compensation from the Miami Companies in the amount of \$100,000. They have agreed to continue in their present capacities with the Surviving Company for the same aggregate annual compensation which they are receiving from the Miami Companies.

#### TAX STATUS OF MERGER

In the opinion of Meltzer & Schiffrin, Esquires, of Philadelphia, Pennsylvania, the following will be the tax effect of the merger:

1. The merger of Miami and Benner into New Haven as the Surviving Company will constitute a statutory merger, and therefore, a tax-free reorganization as defined in Section 368(a)(1)(A) of the Internal Revenue Code of 1954;



2. No gain or loss will be recognized to any of the corporate parties to the merger;
3. No gain or loss will be recognized to the present holders of the Common Stock of New Haven in connection with the merger and the basis to them of the Common Stock held by them will remain the same as prior to the merger;

#### PROCEDURE FOR APPROVAL OF MERGER

##### Voting Rights

The holders of record of the Common Stock of New Haven at the close of business on ~~January 21~~ <sup>FEB 10</sup> 1964 (the "Record Date"), are the only stockholders of New Haven entitled to notice of and to vote at the Annual and Special Meeting and at any adjournment or adjournments thereof. There were 460,353 shares of Common Stock issued and outstanding on the Record Date, of which 2,016 shares were held by New Haven in its treasury. Each share of Common Stock issued and outstanding, other than the 2,016 shares held by New Haven, entitles the holder thereof to one vote.

##### Shares Required for Approval

The affirmative vote of the holders of at least two-thirds of the outstanding shares of Common Stock, exclusive of the shares of Common Stock held by New Haven in its treasury, is required to approve the Agreement and Plan of Merger.

##### Rights of Dissenting Stockholders

The rights of dissenting Stockholders of New Haven are set forth in Sections 33-373 and 33-374 of the Connecticut Stock Corporation Law.

#### STOCK OPTIONS

The Board of Directors of New Haven has adopted and recommended for the approval of stockholders a Stock Option Plan designed to comply with Section 421 of the Internal Revenue Code of 1954, as amended, and as proposed to be amended by the Revenue Bill of 1963 (H.R. 8363), which Plan provides for the granting of options to acquire not more than an aggregate of 50,000 shares of the Common Stock of New Haven to key employees of the Company, including officers, but excluding beneficial owners of more than 5% of New Haven's outstanding Common Stock. The option price is to be not less than 100% of the fair market value of the stock on the date on which the options are granted. Each option shall be exercisable as to 25% of the aggregate number of shares originally subject thereto two years after the date of granting thereof, as to an additional 25% on the third anniversary date, and as to the balance on the fourth anniversary date, on a cumulative basis. Generally, options terminate five years after the date of granting, except that in the event of death, the option may be exercised by the decedent's personal representative within six months thereafter.

Option holders are protected against dilution. Any shares subject to options which expire or terminate may be made the subject of new options under the plan.

The affirmative vote of the holders of at least a majority of the shares represented at the Meeting, is required to approve the Restricted Stock Option Plan.

### PROXY AND VOTING PROCEDURES

The accompanying proxy is solicited by the Management of New Haven for use at the Annual and Special Meeting of the Stockholders of the Company to be held February 28, 1964 or at any adjournment or adjournments thereof.

The presence at the meeting of the person granting a proxy does not revoke the proxy. Any stockholder may, however, revoke his proxy before it is exercised by delivering to New Haven a duly executed instrument revoking said proxy, or a duly executed proxy bearing a later date. The persons named in the accompanying proxy intend to vote the shares represented by the proxy in favor of the approval and adoption of the Agreement, the Restricted Stock Option Plan and the management slate of nominees for re-election as Directors, unless the proxy is marked to the contrary and in that case they will vote the shares represented by the proxy in accordance with the directions contained in the proxy.

As of the date of this Proxy Statement, the Management does not know of any matters which will come before the meeting other than those referred to in the notice of the meeting. If any other matter or matters should properly be brought before the meeting or any adjournment or adjournments thereof, it is the intention of the persons named in the accompanying proxies to vote said proxies on such matters in accordance with their best judgment.

By Order of the Board of Directors

/s/ JACOB J. SIEGAL,  
Secretary

New Haven, Conn.  
February 12, 1964



## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of 16th day of January, 1964, between THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED, a Connecticut corporation having its principal place of business at New Haven, Connecticut (hereinafter called "New Haven"), MIAMI PAPER BOARD MILLS, INC., a Florida corporation having its principal place of business at Miami, Florida (hereinafter called "Miami"), and BENNER BOX, INC., a Florida corporation having its principal place of business at Miami, Florida (hereinafter called "Benner"), all three corporations being hereinafter sometimes collectively called ("the Constituent Corporations"),

### WITNESSETH:

WHEREAS, New Haven is a corporation duly organized and existing under the laws of the State of Connecticut, having been incorporated on January 18, 1901 and having an authorized capital stock consisting of 500,000 shares of common stock with a par value of \$10.00 per share, of which 460,353 shares are issued and outstanding, including 2,016 shares held by New Haven in its treasury; and

WHEREAS, Miami is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on October 31, 1939, and having an authorized capital of 300 shares of common stock with no par value, of which 300 shares are now outstanding, and 500 shares of 6% non-cumulative, non-participating preferred stock with a par value of \$100.00 each, of which 500 shares are now outstanding; and

WHEREAS, Benner is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on January 14, 1950, and having an authorized capital of 50 shares of common stock with no par value, of which 50 shares are now outstanding; and

WHEREAS, each of the corporations was organized for the purpose of and is engaged in the business of manufacturing and selling paper board and boxes; and

WHEREAS, the Boards of Directors of the Constituent Corporations deem it advisable that these corporations merge and have duly approved and authorized the form of this Agreement and Plan of Merger; and

WHEREAS, the laws of the States of Connecticut and Florida permit such a merger and the Constituent Corporations desire to merge under and pursuant to the laws of their respective States,

NOW, THEREFORE, in consideration of the promises and of the mutual covenants, agreements and warranties herein contained, and subject to the approval of this Agreement by the respective stockholders of each of the corporations as required by law, it is agreed that Miami and Benner shall be merged with and into New Haven, which shall be the surviving corporation and shall continue its corporate existence as a Connecticut corporation under its present charter as modified and restated herein, and to that end the parties hereto do hereby agree upon and prescribe the terms and conditions of such merger and the mode of carrying the same into effect as follows:

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ARTICLE I

The name of the surviving corporation shall be The New Haven Board & Carton Company, Incorporated.

ARTICLE II

The first Directors of the surviving corporation shall be 11 in number and their names and places of residence are as follows:

(to be inserted following election)

ARTICLE III

The surviving corporation and its principal office and place of business shall be located at New Haven, Connecticut. The Resident Agent of the surviving corporation in the State of Florida shall be Mrs. Edith Swinney, a citizen and resident thereof, whose post office address is P.O. Box 48-197, International Airport, Miami, 48, Florida.

ARTICLE IV

The nature of the business to be transacted and the purposes to be promoted or carried out by the surviving corporation are as follows:

- (a) To manufacture, buy, sell or deal in paper box board and folding paper boxes, and to do all business necessary or incidental thereto;
- (b) To manufacture, buy and sell any and all articles made from, of, or containing metal, minerals, chemicals, wood, agricultural products, or any other materials of whatsoever kind, in whole or in part, and machinery and other appliances and devices for use in connection with any or all of the same, and to install, extract, nurture, grow or care for, and in any manner deal in or with any kind of crop, animal, thing, material or article.
- (c) To engage in the wholesale and retail merchandising of personal property of any description and the manufacture thereof, and also designing and development and non-professional engineering of a type not required to be registered or regulated by any present or future law of the State of Connecticut, in connection with any of the corporate purposes herein set forth;
- (d) To acquire, hold, use, own, develop, lease, mortgage, pledge, sell, assign, convey or otherwise dispose of, and otherwise deal in and exercise any and all rights in respect to, real or personal property of every kind, class and description, including stock, bonds, and other securities, and also including trademarks, trade-names, patents, inventions, improvements and processes granted by, recognized, or otherwise existing under the laws of the United States or any State thereof, or any political subdivision, or any foreign Country or subdivision thereof, and licenses, sub-licenses, assignments and any other interests in connection with the foregoing, and in respect to all of the foregoing, to take and grant licenses and sub-licenses, or otherwise turn the same to account;
- (e) To enter into, make and perform contracts of every kind, incident to its business, without limit as to amount, with any person, firm, corporation, town, city, county, state, government or any political subdivision thereof, and to assume responsibility for the performance by others of contracts and choses in action when conducive to the interests of the corporation;
- (f) To act as agent, financial, business or otherwise, or as representative for, or in partnership or other association with, any person, firm or corporation, and for any and all purposes not specifically forbidden by law whether or not enumerated herein;



(g) To borrow or raise moneys for any of the purposes of the corporation and, from time to time, without limit as to amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, which may when duly authorized be convertible on specified terms into stock of the corporation, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes;

(h) To carry on any and all of its operations and business and to promote its objects within the State of Connecticut, or elsewhere, whether within or without the United States of America, without restriction as to place or amount, and to do any and all of the things herein set forth to the same extent as natural persons might or could do and in any part of the world, as principals, agents, contractors or otherwise, alone or in company with others.

The enumeration of the foregoing objects, purposes and powers shall not be held to limit or restrict in any manner the general powers conferred on the corporation by the laws of the State of Connecticut.

#### ARTICLE V

The amount of the capital stock of the surviving corporation hereby authorized is \$2,000,000.00 divided into 2,000,000 shares of common stock with a par value of \$1.00 each.

#### ARTICLE VI

The duration of the surviving corporation is unlimited and perpetual.

#### ARTICLE VII

The surviving corporation reserves the right to amend, alter, change or repeal any provision contained in this Agreement of Merger, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

#### ARTICLE VIII

The manner of converting the shares of capital stock of each of the Constituent Corporations into shares of the capital stock of the surviving corporation is as follows:

(a) The holders of the issued and outstanding common stock of New Haven shall upon the merger retain their old certificates and no new certificates of stock will be issued to them, but the certificates of stock evidencing said issued and outstanding stock shall be deemed amended to reduce the par value of the shares stated thereon from \$10.00 per share to \$1.00 per share.

(b) The holders of the issued and outstanding common stock of Miami shall upon the merger be respectively entitled to 2,925.92 shares of the common stock of the surviving corporation for each share of the Miami common stock held by them; the holders of the issued and outstanding preferred stock of Miami shall upon the merger be respectively entitled to 22.22 shares of the common stock of the surviving corporation for each share of the Miami preferred stock held by them; and the holders of the

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issued and outstanding common stock of Benner shall upon the merger be respectively entitled to 9,777.76 shares of the common stock of the surviving corporation for each share of the Benner Common stock held by them. The surviving corporation shall issue its certificates therefor upon surrender to it of the certificates of the Miami and Benner common and preferred stock:

Provided, however, that no fractional shares or rights to or warrants for fractions shall be issued by the surviving corporation, but in lieu thereof, the surviving corporation shall issue scrip evidencing said fractional interests, which may be convertible into whole share units of the surviving corporation's common stock upon surrender to the surviving corporation of such scrip within fifteen (15) days after issuance, together with payment of an amount equivalent to the fair value of the balancing fractional interest, valuing the shares of the surviving corporation's common stock for that purpose at \$4.50 per share. In the event that the scrip is not converted in the manner and within the period specified, the rights granted thereunder shall expire and be deemed null and void and said scrip shall have no cash or redemption value and shall not entitle the holder thereof to any rights whatsoever against the surviving corporation.

(c) As promptly as practicable after the Effective Date, certificates for shares of the common and preferred stock of Miami and of the common stock of Benner shall be surrendered in exchange for shares of the common stock of the surviving corporation at the rates hereinabove provided. Until so surrendered, each such outstanding certificate shall be deemed for all corporate purposes, except for the payment of dividends or other distributions, to evidence ownership of shares of the common stock of the surviving corporation at the rates hereinabove provided, except that fractional interests in shares shall be disregarded.

(d) On and after the effective date hereinafter stated of the merger, the Miami and Benner stockholders shall have the rights herein stated to stock in the surviving corporation and to scrip for fractional interests, if applicable, and thereafter shall have no other rights save as provided by law; and on and after said date, the New Haven stockholders shall have the rights herein stated and as provided by law and no others.

## ARTICLE IX

The amount of outstanding capital stock with which the surviving corporation shall commence business after the merger shall be \$1,838,127.00 consisting of 1,838,127 shares of New Haven common stock with a par value of \$1.00 each, subject to a possible increase or decrease, depending upon the exercise of the conversion rights contained in the scrip to be issued by the surviving corporation in lieu of fractional shares.

## ARTICLE X

The By-Laws of the surviving corporation shall be those shown on Exhibit "A" hereto annexed and made a part hereof.

## ARTICLE XI

The Directors of the surviving corporation shall meet immediately after the merger becomes effective to elect officers of the surviving corporation.

## ARTICLE XII

The surviving corporation shall possess all the rights, privileges, powers and franchises of each of the merging corporations and, on the effective date of said merger, all property, real, personal and mixed, and all debts due them on whatever account, shall be vested in the surviving corporation and all rights of



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creditors and all liens upon the property of either of such merging corporations shall be preserved unimpaired, and Miami and Benner shall continue its existence insofar as may be necessary to preserve the same. All debts, liabilities and obligations of either of said merging corporations shall henceforth attach to the surviving corporation and may be enforced against it to the same extent as if incurred or contracted by it.

Each of the merging corporations does for itself further agree to execute or cause to be executed such documents or other instruments in writing necessary or desirable to carry out the provisions of this merger agreement, as well as such assignments or other instruments of transfer as may be necessary or convenient to vest in the surviving corporation full and complete title to any and all of its properties and assets.

### ARTICLE XIII

Miami and Benner shall obtain and deliver to New Haven, without cost to any of the Constituent Corporations, releases from the affiliated sales companies named below (hereinafter called "Associated Companies"), of any rights which said companies may have either to sell products manufactured or produced by Miami or Benner, or to purchase supplies for resale to either of said companies, so that all related purchasing and selling activities of Miami and Benner shall upon the effectiveness of the merger be vested in the surviving corporation:

Tropical Board Sales, Inc., a Florida corporation

Dixie Printing Ink, Inc., a Florida corporation

Miami Paper Board Sales, Inc., a Florida corporation

Benner Box Sales, Inc., a Florida corporation

In addition, Miami and Benner shall obtain and deliver to New Haven the personal warranties of Leon J. Simkins and Morton H. Simkins, that the financial statements of Miami, Benner, and their respective subsidiaries, giving effect to the sales and purchasing activities heretofore conducted by Associated Companies, and any other information concerning Miami, Benner, their respective subsidiaries or Associated Companies furnished by any of them for inclusion in the Proxy Statement to the stockholders of New Haven in connection with the meeting of said stockholders to vote upon this Agreement and Plan of Merger (herein called the "New Haven Proxy Statement") properly reflect the financial condition and operations of said companies as of the dates and for the periods indicated to the best of their knowledge, information and belief; and after ratification by said stockholders but prior to the Effective Date, shall obtain and deliver to New Haven the personal warranties of Leon J. Simkins and Morton H. Simkins that there has been no material adverse change in the combined financial condition of Miami, Benner and their respective subsidiaries, giving effect to the sales and purchasing activities heretofore conducted by Associated Companies, from their combined financial condition as revealed in the financial statements and other information appearing in the New Haven Proxy Statement except for changes resulting from transactions entered into with the written approval of New Haven.

### ARTICLE XIV

1. This Agreement and Plan of Merger shall be submitted to the stockholders of New Haven, Miami and Benner in accordance with the applicable laws of the States of Connecticut and Florida, at meetings which shall be held on or before February 29, 1964, or such later date as the parties hereto shall approve,

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upon such notice thereof to the stockholders of the respective corporations as may be required by law. If this Agreement and Plan of Merger shall be duly authorized and approved by the requisite votes of such stockholders as required by applicable law and this Agreement and Plan of Merger is not terminated as permitted by the provisions hereof, this Agreement and Plan of Merger, or a Certificate of Merger incorporating the provisions hereof, shall be executed and filed in the manner prescribed by the laws of the States of Connecticut and Florida. The date on which the merger becomes effective under the laws of the States of Connecticut and Florida shall be deemed to be the Effective Date of the merger for the purposes hereof and is herein called the "Effective Date."

2. Anything herein or elsewhere to the contrary notwithstanding, this Agreement and Plan of Merger may be terminated by written notice as hereinafter provided, at any time prior to the Effective Date:

**A. By New Haven, if:**

(1) Miami and Benner shall have failed to deliver to New Haven within ten (10) days after ratification of this Agreement and Plan of Merger by the stockholders of New Haven all of the releases and warranties required by and described in Article XIII.

(2) Any material litigation or proceeding shall be pending or threatened against or shall affect Miami, Benner, any of their respective subsidiaries, any of their assets, or the transactions contemplated by this Agreement and Plan of Merger; or

(3) Counsel for Miami and Benner shall fail to deliver to New Haven, prior to the Effective Date, their opinion that (a) Miami and Benner are corporations duly organized and existing under the laws of the State of Florida; and (b) the authorized and issued capital stock of Miami and Benner are as hereinbefore recited and that all of the shares issued and outstanding are fully paid and non-assessable; and (c) there are no outstanding options, subscriptions or other agreements of any kind whatsoever to acquire any of the unissued shares of the authorized capital stock of Miami or Benner; and (d) to their knowledge there is no action or proceeding pending or threatened, as described in sub-paragraph (2) hereof; or

(4) This Agreement and Plan of Merger is not duly approved by the Board of Directors and the stockholders of Miami and Benner in the manner prescribed by Florida law within ten (10) days after ratification of this Agreement and Plan of Merger by the New Haven stockholders; or

(5) Miami and Benner shall fail to deliver to New Haven within ten (10) days after ratification of this Agreement and Plan of Merger by the New Haven stockholders, statements certified to by their respective secretaries, setting forth the number of shares of stock of each of their respective companies voted in favor of and the number voted against this Agreement and Plan of Merger, and a list of stockholders who, as of the date of such certificate, have filed written objections to such Agreement and Plan of Merger showing the number of shares owned of record by each such stockholder; or

(6) Consent to such termination is obtained from the Boards of Directors of Miami and Benner; or

(7) The holders of more than 5% of the aggregate of the capital stock of Miami and Benner issued and outstanding, shall have filed written objections to this Agreement and Plan of Merger entitling the objectors to demand payment for their shares; or

(8) Miami or Benner shall fail to perform any obligation imposed upon them by the provisions of this Agreement and Plan of Merger.



B. By Miami or Benner, if:

(1) New Haven shall fail to obtain and deliver to Miami and Benner the certificate of its Controller stating that the financial statements of New Haven and any other information concerning New Haven furnished by it for presentation to the stockholders of Miami and Benner (by Proxy Statements or otherwise) in connection with stockholders meetings of said companies to vote upon this Agreement and Plan of Merger properly reflect the financial condition and operation of New Haven as of the dates and for the periods indicated to the best of his knowledge, information and belief; or

(2) New Haven shall fail to obtain and deliver to Miami and Benner the certificate of its Controller stating that there has been no material adverse change in the financial condition of New Haven from its financial condition as revealed in the financial statements furnished by it for presentation to the Miami and Benner stockholders to the best of his knowledge, information and belief, except from changes resulting from transactions entered into with the written approval of Miami and Benner; or

(3) Any material litigation or proceeding shall be pending or threatened against or shall affect New Haven, any of its assets, or the transactions contemplated by this Agreement and Plan of Merger, except for such litigation or proceeding as shall be disclosed by New Haven in connection with the financial statements furnished by it for presentation to the Miami and Benner stockholders; or

(4) Counsel for New Haven shall fail to deliver to Miami and Benner, prior to the Effective Date, their opinion that (a) New Haven is a corporation duly organized and existing under the laws of the State of Connecticut; and (b) the authorized and issued capital stock of New Haven is as herein recited and that all of the shares issued and outstanding are fully paid and non-assessable; and (c) there are no outstanding options, subscriptions or other agreements of any kind whatsoever to acquire any of the unissued shares of the authorized capital stock of New Haven except for issuance of not more than 2016 shares of common stock under and pursuant to New Haven's Stock Bonus Plan; and (d) to their knowledge there is no action or proceeding pending or threatened, as described in subparagraph (3) hereof, except as disclosed by New Haven in connection with the financial statements furnished by it for presentation to the Miami and Benner stockholders; or

(5) This Agreement and Plan of Merger is not duly approved by the Board of Directors and the stockholders of New Haven in the manner prescribed by Connecticut Law on or before February 29, 1964; or

(6) New Haven shall fail to deliver to Miami and Benner within ten (10) days after ratification of this Agreement and Plan of Merger by the New Haven stockholders, statements certified by its Secretary, setting forth the number of shares of stock voted in favor of and the number voted against this Agreement and Plan of Merger, and a list of stockholders, who as of the date of such certificate, have filed written objections to such Agreement and Plan of Merger and showing the number of shares owned of record by each of such stockholders; or

(7) Consent to such termination is obtained from the Board of Directors of New Haven; or

(8) New Haven shall fail to perform any obligation imposed upon it by the provisions of this Agreement and Plan of Merger.

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3. In the event of termination of this Agreement and Plan of Merger by New Haven, Miami or Benner, as provided in paragraph 2 of this Article XIV, this Agreement and Plan of Merger shall forthwith become wholly void and of no effect and there shall be no liability on the part of New Haven, Miami or Benner or their respective officers, directors or stockholders to any other party hereto or its officers, directors or stockholders, and each party shall bear its own expenses in connection with the transactions contemplated by this Agreement and Plan of Merger.

### ARTICLE XV

1. Prior to the Effective Date, neither New Haven, Miami nor Benner, nor any of their subsidiaries, will engage in any activity or transaction, or incur any obligation (contingent or otherwise) other than in the ordinary course of business (including, without limitation, entering into any long term employment agreements) or mortgage or encumber any of its property without first obtaining the written approval of the others, nor will either of them issue any rights to subscribe to, or to convert any obligation into, or grant any option to purchase any shares of its capital stock, nor issue or sell any shares of its capital stock or any evidence of indebtedness or other security, or declare or pay any dividends or make any other distribution with respect to its capital stock or redeem or agree to redeem any shares of its capital stock.

2. New Haven, Miami and Benner shall each grant the other full access to its books, records, plants and other facilities in carrying out the transactions contemplated herein.

3. Each of the Constituent Corporations represents to the others that it has not incurred and will not incur any liability for brokerage fees or agents' commissions in connection with this Agreement and Plan of Merger and the transaction contemplated herein.

4. In the event that this Agreement and Plan of Merger is approved by the stockholders of the Constituent Corporations and the Plan of Merger contemplated herein is consummated, then the surviving corporations shall bear all of the costs incident to this Agreement and Plan of Merger and the transactions contemplated herein, including, without limitation, counsels' and accountants' fees, costs in connection with printing, distribution and solicitation of Proxy Statements and proxies, transfer agents' and registrars' fees, and documentary stamp taxes which may be required in connection with the transactions contemplated herein.

5. All notices which are required or may be given pursuant to the terms of this Agreement and Plan of Merger shall be sufficient in all respects if given in writing and delivered personally or by registered or certified mail, postage prepaid, to the following addresses or to such other addresses as may be given in writing by the addressee to the other parties pursuant hereto:

New Haven Board & Carton Company, Incorporated  
259 East Street  
New Haven, Connecticut

Miami Paper Board Mills, Inc.  
P.O. Box 197, International Airport  
Miami, Florida

Benner Box, Inc.  
P.O. Box 193, International Airport  
Miami, Florida

6. This Agreement and Plan of Merger may be executed in any number of counterparts each of which shall be deemed to be an original instrument.



## Appendix F-27

IN WITNESS WHEREOF, The Directors, or a majority thereof, of each of the above-named Constituent Corporations have executed this Agreement and Plan of Merger as of the day and year first above written.

<div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   MORTON H. SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   LEON J. SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   STERLING R. CHATFIELD</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   MALCOLM SANDERS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   EDWIN W. MILLER</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   JOHN L. MCCREERY</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   DOROTHY SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   LEON MELTZER</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   WILLIAM B. GUMBART</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   JACOB J. SIEGAL</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;"> </div>	}	<p>Directors of The New Haven Board &amp; Carton Company, Incorporated</p>
<div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   LEON J. SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   MORTON H. SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   DOROTHY SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   VIVIAN SIMKINS</div>	}	<p>Directors of Miami Paper Board Mills, Inc.</p>
<div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   LEON J. SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   MORTON H. SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   DOROTHY SIMKINS</div> <div style="border-bottom: 1px solid black; padding-bottom: 2px;">/s/                   VIVIAN SIMKINS</div>	}	<p>Directors of Benner Box, Inc.</p>

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## APPENDIX G

MINUTES: BOARD OF DIRECTORS MEETING  
THE NEW HAVEN BOARD & CARTON CO., INC.  
THURSDAY, JANUARY 16, 1964 - 2:00 P.M.

Pursuant to notice, a Special Meeting of the Board of Directors of The New Haven Board & Carton Company, Inc. was held at the Company's Office, 259 East Street, New Haven, Connecticut, on Thursday, January 16, 1964.

Mr. Leon J. Simkins, Chairman of the Board, presided and called the meeting to order at 2:20 P.M. In the absence of Mr. Jacob J. Siegal, Secretary, who was called out of town on business, Mr. Simkins appointed Mr. Leon Meltzer, as Acting Secretary of the meeting.

Directors present: Leon J. Simkins  
Morton H. Simkins  
Dorothy Simkins  
Edwin W. Miller  
Sterling Chatfield  
John McCreery  
William B. Gumbart  
Leon Meltzer  
Malcolm Sanders

Directors absent: Jacob J. Siegal  
C. Raymond Hailey

Additional Attendees: Irvin Sklar of Sklar, Carmosin & Company  
Joseph Field of Meltzer & Schiffman

It was unanimously agreed to dispense with the Minutes of the last meeting of the Board of Directors, since copies of the said Minutes had been sent to all Directors. However, it was suggested by Mr. Gumbart that Mr. Meltzer review the Minutes and mention the highlights thereof, which he did.

Mr. Leon J. Simkins then asked whether there were any additions or corrections to the Minutes, or if they were accepted as read. Mr. Morton Simkins stated that he had two corrections. First, the Minutes stated that the Company had agreed to sell the stock of New Haven Truck Rental Company for \$10,000.00; that the actual sales price was \$15,000.00. Secondly, Mr. Simkins noted that the Directors had discussed the advisability of having some of the New Haven orders filled at the plants of Denver Box, Inc., or Miami Paper Board Mills, Inc. if New Haven was unable to fill the orders, or it would

Plaintiff's Exhibit 22



be more profitable to have the orders completed at the Miami factory, and the Board of Directors had authorized the officers of the Company to use their discretion in this regard.

Upon motion duly made by John McCreery, seconded by Morton H. Simkins, and unanimously approved, it was agreed to accept the Minutes as read, subject to the two amendments referred to by Morton H. Simkins.

Mr. Leon Simkins then referred to his negotiations with Swane Paper Corporation covering the proposed sale of the Fitzhugh Corrugated Division. He stated that the negotiations have become quite prolonged, that Swane, which was dissatisfied with the lease covering the Fitzhugh premises, had been unable to secure a satisfactory revision of the lease and therefore the negotiations were terminated. He further stated that during the negotiation period the morale of the employees had been affected and he had therefore decided not to enter into any further negotiations for the sale of the plant in the near future. He expressed the hope that the Corrugated Division might improve its operating efficiency and become a profitable operation.

Mr. Leon Simkins then discussed the statement of financial condition prepared by the Company's accountants for the fiscal year ended September 30, 1963.

Mr. Miller then stated that he had received a number of inquiries as to the date of the Annual Stockholders' Meeting, which, in the past, had been held on the third Monday of January. Mr. Leon Simkins stated that it had been necessary to defer the Annual Meeting for reasons which would become evident during the course of the meeting.

At the suggestion of the Chairman of the Board, Mr. Leon Meltzer reported on negotiations between the Penn Mutual Life Insurance Company and Simco Waste Paper Company, Inc. He stated that Mr. Leon Simkins had discussed with the Penn Mutual Life Insurance Company the possibility of purchasing the New Haven note for less than its \$2,000,000 face value. After considerable discussion, he was advised that if the note was purchased prior to December 31, 1963, the Penn Mutual Life Insurance Company would sell the note for \$1,660,687.00.

On December 31, 1963, Simco Waste Paper Company, Inc., a company affiliated with the Miami companies owned and controlled by the Simkins' family, entered into an agreement with Penn Mutual Life Insurance Company to purchase the note for the aforesaid amount. It paid on account of the purchase price \$423,187 on December 31, 1963 and \$900,000 on January 7, 1964, leaving a principal balance of \$337,500, one-half of said sum (\$168,750) was due on or before June 30, 1964, and the balance was due on or before December 31, 1964, plus 5% interest per annum on unpaid balances. Mr. Meltzer stated that he had been authorized on behalf of Simco Waste Paper Company, Inc. to offer to sell the note to New Haven at its cost, which was approximately \$460,000 below face. After considerable discussion, the Board approved the purchase of the note by New Haven and on motion duly made by Leon Meltzer and seconded by Mr. Miller, it was

RESOLVED, that the corporation purchase its \$3,000,000. 3-3/4% note dated March 29, 1955 and issued to The Penn Mutual Life Insurance Company, a Pennsylvania corporation, on which the unpaid principal balance is \$2,100,000. (hereinafter called the "New Haven Note") from Simco Waste Paper, Inc., a Florida corporation, for the sum of \$1,660,687.50 by paying to Simco Waste Paper, Inc. the sum of \$1,323,187.50 on or before , 1964, together with interest thereon on the sum of \$423,187.50 from December 31, 1963 and on \$900,000. from January , 1964 to the date of said payment, and by assuming promissory note dated December 31, 1963 and executed and delivered by Simco Waste Paper, Inc. to The Penn Mutual Life Insurance Company in the face amount of \$1,237,500. on which the unpaid principal balance is \$337,500. (hereinafter called the "Simco Note"), said note required payment to The Penn Mutual Life Insurance Company of \$168,750. on or before June 30, 1964 and \$168,750 on or before December 31, 1964, with interest on each installment at the rate of 5% per annum, from December 31, 1963, payable at the time of each installment; provided that such purchase shall be under and subject to a collateral assignment of the "New Haven Note" to The Penn Mutual Life Insurance Company to secure payment of the obligation of Simco Waste Paper, Inc. to The Penn Mutual Life Insurance Company under the "Simco Note".

FURTHER RESOLVED, that the officers of this corporation be and the same are hereby authorized and directed to take all steps necessary and appropriate to effectuate the foregoing Resolution.

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Upon motion duly made, seconded and unanimously carried, the above resolution was passed and set forth.

Mr. Leon J. Simkins then discussed the possible merger of certain of the Miami companies and New Haven. He made an exhaustive review of the Miami Company operations, both from the viewpoint of increase in net worth, sales, profits. In effect, he stated the following:

Miami Paper Board Mills, Inc. is engaged in manufacturing folding and setting up box board in the State of Florida. The present capacity is approximately 85 tons a day. Its buildings are modern, well designed, efficient 1-story buildings, containing approximately 70,000 square feet, located on a site of approximately 14 acres in a highly industrialized section of Miami, within one mile from Miami International Airport. The properties are owned by wholly owned subsidiaries of Miami Paper Board Mills, Inc. and Benner Box, Inc. The buildings occupy only a portion of the land, which has increased considerably in value. The Company's machinery and equipment is modern, efficient and well maintained. A large portion thereof was designed and built by the Company's Engineering Department.

The entire production of Miami Paper Board Mills, Inc. is sold through Miami Paper Board Mills, Inc. and The Benner Mills Sales, Inc. The Sales Companies sell approximately two-thirds thereof to Benner Box, Inc., which is the largest producer of paper folding boxes in the State of Florida. It too occupies one story buildings, which are modern and well designed. The buildings contain approximately 175,000 square feet adjacent to the property occupied by Miami and leased from Benner's wholly owned subsidiary, Samson Properties, Inc. The company's sales and profits have increased each year. Benner's sales are made by Benner Box Sales, Inc.; its ink is supplied by Dixie Printing Ink, Inc. It was proposed that Benner and Miami, including their wholly owned subsidiaries, be merged into New Haven, that New Haven be the Surviving Corporation, and that in addition thereto, New Haven take over the functions and personnel of all of the sales companies and Dixie Printing Ink, Inc.

The Chairman then called on Mr. Irvin Sklar, of Sklar, Carson & Company (accounting firm) to give financial picture on the proposed merger. Mr. Sklar had several exhibits prepared --

Balance Sheets, Combined Pre-Tax Earnings, Combined Net Worth, Combined Sales, covering New Haven Board & Carton, as well as Miami Paper Board Mills, Benner Box and subsidiaries. New Haven's figures taken from reports prepared by C.P.A.'s in New Haven - for presentation to Directors.

Mr. Simkins then read a preliminary report prepared by the American Appraisal Company expressing an opinion of fair market value of Miami Paper Board Mills, Inc., Benner Box, Inc. and wholly owned subsidiaries. A detailed report had been expected for the Board Meeting. However, American Appraisal had been unable to complete it by this date, but sent through a covering letter which Mr. Simkins read to the Board, signed by Mr. C. E. O. Walker, dated December 20, 1963.

Mr. Simkins pointed out that Combined Pre-Tax earnings of their companies amounted to \$1,038,028.

Mr. Meltzer said that if the Plan of Merger was approved by the Board and subsequently ratified by the stockholders, New Haven would acquire all the capital stock of Miami Paper Board Mills, Inc. and Benner Box, Inc. by issuing common stock.

At this point, Mr. Meltzer distributed a copy of Agreement and Plan of Merger to each Director for their perusal and subsequent discussion.

After considerable discussion, on motion duly made, seconded and unanimously carried, it was

RESOLVED, that the Board of Directors approve and adopt the Agreement and Plan of Merger submitted to this meeting, a copy of which is ordered annexed hereto, providing for the merger of Miami Paper Board Mills, Inc., a Florida corporation, and Benner Box, Inc., a Florida corporation, with and into this corporation on the terms and conditions therein stated, subject to approval of the stockholders as required by law; and

FURTHER RESOLVED, that the Officers and Directors of the Corporation be and the same are hereby authorized and directed to call a Special Meeting of the Stockholders for the purpose of voting upon the said Agreement and Plan of Merger, with the recommendation of the Board of Directors



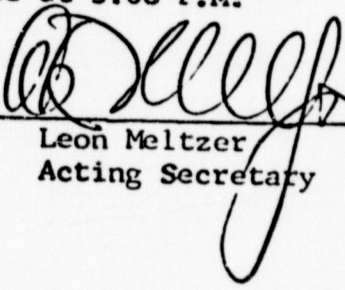
Appendix G-6

that the same be approved, and upon the approval of said Agreement and Plan of Merger by the Stockholders, to take all steps necessary or appropriate to effectuate said Agreement and Plan of Merger.

The Agreement and Plan of Merger was then signed by all Directors present.

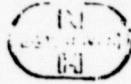
Mr. Simkins recommended that a "Stock Option Plan" be made available to key employees to serve as an inducement when recruiting, as well as an incentive to present employees. Mr. Simkins suggested that 50,000 shares be authorized for this proposal. There has been no sort of bonus plan in effect for the last several years due to the financial picture of the Company and this was thought to be an excellent suggestion. The Stock Option would be offered at 100% market price. A motion was made, seconded and unanimously carried to adopt a Stock Option Plan and set aside 50,000 shares for that purpose, it being understood that no person owning more than 5% of the stock, would be eligible to participate.

There being no further business, on motion duly made, seconded and carried, the meeting adjourned at 5:08 P.M.



---

Leon Meltzer  
Acting Secretary



## THE NEW HAVEN BOARD &amp; CARTON COMPANY, INC.

NEW HAVEN 8, CONNECTICUT

TELEPHONE: State 7-7171

PLAINTIFF'S

OCT 25 1966

EX 21 ID.PROMISSORY NOTE

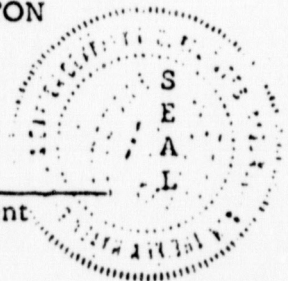
For value received, The New Haven Board & Carton Company, Inc., a Connecticut Corporation, hereby promises and agrees as follows:

- (1) To pay to Simco Waste Paper Company, Inc., a Florida Corporation, the principal amount of Seven Hundred Eighty Six Thousand Five Hundred dollars (\$786,500.00) on December 31, 1965.
- (2) To pay interest on any unpaid principal from January 17, 1964 at the rate of 5 percent per annum payable June 30 and December 31.
- (3) This note may be prepaid in whole or in part at any time without penalty.
- (4) Signed on this 17th day of January, 1964.

THE NEW HAVEN BOARD & CARTON  
COMPANY, INC.

BY:

Leon J. Simkins  
Leon J. Simkins - President



WITNESS:

S. J. [Signature]

General Sales Offices: 575 Lexington Ave.  
New York 22, N. Y. • PLaza 2-0700

General Sales Offices: 575 Lexington Ave.  
New York 22, N. Y. • PLaza 2-0700

Fitzhugh Corrugated Division  
Labeview, West Hempstead, L.I., New York

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PAINT-GARD • PRINTED FOLDING CARTONS • LABELS • CORRUGATED CONTAINERS

Plaintiff's Exhibit 23



Pltf. 24

MAR 15 1964

FOR IDENTIFICATION  
U. S. DISTRICT COURT  
DISTRICT OF CONN.

APPENDIX I

January 31, 1964

Mr. Gareth W. Speer,  
Financial Secretary  
The Penn Mutual Life Insurance Company  
Independence Square  
Philadelphia 5, Pennsylvania

Dear Mr. Speer:

As promised some time ago, I am enclosing financial results for the quarter ending December 31, 1963 in the comparative form which has been satisfactory to you in the past. I trust you will find these in order.

It is my understanding that some other company has purchased our Note to you and that our payment due March 15 should be made to this other company. I would appreciate your advice in this connection.

Thank you.

Very truly yours,

THE NEW HAVEN BOARD & CARTON  
COMPANY, INC.

William S. Medinger  
Controller

WSM/bpc

Enclosures

Plaintiff's Exhibit 24

OCT 25 1966

## APPENDIX J

## ANNUAL MEETING OF STOCKHOLDERS

THE NEW HAVEN BOARD & CARTON COMPANY, INC.

The annual meeting of stockholders of the New Haven Board & Carton Company, Inc. was held at the Hotel Taft, New Haven, Connecticut, on Friday, February 28, 1964. Leon J. Simkins, President and Chairman of the Board of Directors presided. He called the meeting to order at 10:25 a. m., welcomed the stockholders, and introduced Morton Simkins and himself to the stockholders. He also introduced the Directors of the Company present at the meeting, as well as certain senior officers of the Company.

At Mr. Simkins' request, the Secretary of the Company, Jacob J. Siegal, presented a proof of calling of the meeting and an affidavit of the mailing of notices of the meeting. Mr. Simkins then designated Messrs. Thomas V. O'Keefe and George H. Poulos to act as Tellers and Judges of election. Mr. Siegal called for any additional proxies to be deposited with him. The final tally of shareholders present in person was 0 and by proxy 357,831.

A motion was made, seconded and unanimously carried to waive the reading of the minutes of the last meeting of stockholders.

Mr. Simkins then referred to the Annual Report of the Company for the fiscal year ended September 30, 1963. He discussed some of the details of the financial reports; he elaborated on the problems facing the Company and Management's plans for solving these



present.

Mr. Simkins pointed out that the lack of earnings over the last 7 years has seriously drained the Company's working capital, restricting replacement of obsolete equipment and the purchase of newer equipment such as offset presses. Mr. Simkins also stated that operations were hampered by several serious Union problems.

Mr. Simkins reported that some of the steps which have been taken to alleviate the Company's financial problems were the reduction of salaried personnel, the reduction of some hourly employees, the institution of more efficient purchasing procedures, the shutdown of the Bartgis Plant and the purchase of newer and more efficient machinery.

Following these remarks, Mr. Simkins and Mr. Meltzer replied to numerous questions from stockholders.

The next matter for consideration was the Agreement and Plan of Merger between New Haven and the Miami Companies.

Upon motion made and seconded, and after extensive discussion by Management and the stockholders, it was

"RESOLVED, that the Agreement and the Plan of Merger dated January 16, 1964, between the New Haven Board & Carton Company, Inc., Miami Paper Board Mills, Inc. and Benner Box, Inc., providing for the merger of Miami and Benner and their subsidiary corporations with and into New Haven, as set forth in the Proxy Statement submitted to the Stockholders be approved and adopted by

the stockholders of this Corporation".

The tally of votes was 348,940 shares in favor of the merger and 8,891 shares opposed to the merger.

Mr. Simkins announced that nominations were open for election of 11 directors for a term expiring at the next Annual Meeting or until successors were qualified. A motion was made and seconded to nominate for reelection as Directors of the Corporation the following:

Sterling R. Chatfield  
William B. Gumbart  
Raymond Hailey  
John L. McCreery  
Leon Meltzer  
Edwin W. Miller  
Malcolm Sanders  
Jacob J. Siegal  
Dorothy Simkins  
Leon J. Simkins  
Morton H. Simkins

There being no other nominations, upon motion made, seconded and unanimously carried, nominations were closed.

There being no opposition or contest for the position of any of the directors, Mr. Simkins declared the Directors to have been elected.

Upon motion duly made, seconded and carried, it was

"RESOLVED, that each and all of the resolutions, acts, and proceedings of the Board of Directors of the Corporation heretofore adopted and taken at the several meetings of the Board held since the last stockholders' meeting of this corporation,



as shown by its records in the minute books of this corporation, and each and all of the acts of the officers of this corporation in carrying out and promoting the purposes, objects, and interests of this corporation since the last stockholders' meeting thereof, other than those matters which have been approved by the Board and are to be submitted to the stockholders for vote today, be and the same are approved, ratified and hereby made the acts and deeds of this corporation".

Upon motion duly made, seconded and carried,

it was "RESOLVED, that the Restricted Stock Option Plan, designed to comply with Sec. 421 of the Internal Revenue Code of 1954, as amended, and as proposed to be amended, and on the terms and conditions set forth in the Proxy Statement to the stockholders, be approved and adopted by the stockholders of this Corporation".

The tally of votes was 346,216 in favor and 11,615 against.

After a further question and answer period, a motion was made, seconded and unanimously carried to adjourn the meeting at 1:15 p. m.

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Secretary

APPENDIX K

THE NEW HAVEN BOARD & CARTON CO., INC.  
MINUTES OF BOARD OF DIRECTORS MEETING  
FRIDAY, FEBRUARY 23, 1964 - HOTEL TAFT

PLAINTIFF'S

OCT 25 1966

EX 11 ID.

Pursuant to notice, a meeting of the Board of Directors of The New Haven Board & Carton Company, Inc. was held at the Hotel Taft, New Haven, Connecticut, immediately following the Annual and Special Meeting of Stockholders, Friday, February 23, 1964.

Mr. Leon J. Sinkins, Chairman of the Board, presided and called the meeting to order at 2:00 P.M.

**DIRECTORS PRESENT:** Leon J. Sinkins  
Morton H. Sinkins  
Dorothy Sinkins  
Edwin W. Miller  
Sterling Chatfield  
John McCreery  
William Gumbert, Esq.  
Leon Maltzen, Esq.  
Malcolm Sanders  
Jacob J. Siegal, Esq.

**DIRECTORS ABSENT:** C. R. Hailey

**OTHERS PRESENT BY INVITATION:** Vivian Sinkins  
Irvin Sklar  
Joseph M. Field, Esq.  
Barbara Camera

After a motion made by Mr. John McCreery, it was unanimously agreed to dispense with the minutes of the last meeting of the Board of Directors, since copies of the said minutes had been sent to all Directors.

The first item on the Agenda was the election of officers for the ensuing year, proposed as follows:

President	Leon J. Sinkins
Sr. Vice President	F. S. Wakeman
Exec. Vice President	M. H. Sinkins
Vice President	H. M. Bull
Treasurer	M. H. Sinkins
Secretary	J. J. Siegal
Controller	W. S. Madinger
Asst. Secretary	Barbara Camera

Plaintiff's Exhibit 27



Appendix K-2

There being no further nominations the above listed were declared to be the duly elected officers of the corporation.

The President reported that he had been considering the recommendation of Harold A. Wilson as a Vice President of the company. After discussions, upon motion duly made, seconded and carried, it was resolved to defer action until the next meeting of the Board.

A motion was made and seconded to nominate Leon J. Simkins for reelection as Chairman of the Board of Directors. There being no further nominations, Mr. Simkins was declared to be unanimously elected to such position.

The next item of business was the determination of the salaries of the newly elected officers. Upon motion duly made and seconded, the following salaries were unanimously approved:

President	\$ 60,000.
Executive Vice Pres. & Treasurer	40,000.
Senior Vice President and Vice President (Bull)	No change
Secretary	No salary
Controller	No change
Assistant Secretary	No change

The next item on the Agenda was the adoption of a corporate bank resolution covering Carrier Bank Service at the Fitzhugh Corrugated Division (Franklin National Bank). In accordance with Bank's instructions to make up payroll upon receipt of check and deliver cash to Lakeview, it is necessary for the Board to approve a Resolution, merely formalizing what already has been done in the past. A motion was then made, seconded and unanimously carried that this Resolution be passed and set forth.

The Chairman then stated that the next item slated for discussion and approval was the election of an Administrative Committee for the Employees' Disability & Retirement Plan of The New Haven Board & Carton Company. The Committee proposed being as follows: Leon J. Simkins, Morton H. Simkins, Williams S. Madinger, and Leon Meltzer with Marjorie K. Rivers, Secretary. A motion was made to accept this Committee as proposed, seconded and unanimously approved.

In accordance with the Employees' Disability & Retirement Plan, a Resolution was then proposed to continue P. Aliagretti, an hourly employee at the Pittsburgh Corrugated Division, beyond normal retirement date after proper physical examination indicated that he is physically capable of continuity. A motion was made, seconded, all being in favor with none opposed, to continue this employee beyond retirement date.

The next item on the Agenda was a Resolution to be approved by the Board to include employees of Miami companies from New Haven's Employees Disability & Retirement Plan as well as a Resolution to continue Miami employees on their current Profit Sharing Plan. It was stated that if Miami employees were added to New Haven's Disability & Retirement Plan, New Haven would find it very cumbersome with the large contributions they would have to make. This arrangement would be similar to the Bartgis Pension Plan covering hourly employees excluded from New Haven's Disability & Retirement Plan.

Upon motion made, seconded and unanimously approved, it was resolved that the employees of the Miami companies, merged into the New Haven Board & Carton Company, Inc. shall not be included in the Employees' Disability & Retirement Plan of New Haven.

Further Resolved that the Profit Sharing Plan currently in effect for the employees of the Miami companies shall be continued for said employees upon the same terms and conditions.

In accordance with Mr. Melner's suggestion, he and Mr. Sklar were authorized to review and determine an equitable basis for Profit Sharing contributions to the Plan covering the Miami employees and to submit such plan for Treasury Department approval, if required.

Mr. Milton K. Siskins was then called upon to give the Treasurer's Report. Mr. Siskins stated that the company reduced its bank indebtedness by \$350,000. A note due today was renewed in two parts for 60 and 90 days. The cash position of the company has improved since the summer. Our net current position of short-term borrowing is roughly \$600,000, and there is no immediate commitment for capital investments. Nothing unusual other than current purchases. Upon conclusion of this



Appendix K-4

discussion, it was then moved that the Treasurer's Report be accepted, which was seconded and unanimously agreed upon.

A discussion was then had concerning the warehouse in Baltimore. It was stated that we are continuing to utilize the warehouse, since the company's commitment extends thru December of this year. It currently is approximately one-third filled and is being utilized. Some customers request that their boxes be stored at Bartgis. The question then came up as to whether we could rent it aside from the plant itself. It is rentable space and the Landlord has said it could be rented.

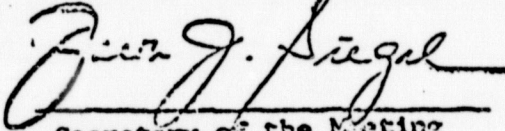
The President then reported on current activities. With Bartgis shut down the company has been reasonably successful in getting its customers to go along with production in one plant, although some have reduced their volume temporarily, but the company is hopeful of returning this volume. It has adequate capacity in Board Mill and with equipment moved up from Bartgis, there is adequate equipment to produce output. However, there is a very serious space problem. The company has been considering the building of a one-story plant to produce cartons in another location; however, there seems to be quite a shortage of acreage in the New Haven area. The company is studying the advisability of reopening the Bartgis Carton operation on a limited basis. The Union in Baltimore, District 50, United Mine Workers, has been very anxious to see if there was any possibility of reopening the plant. If certain concessions can be made to operate efficiently, the company might consider reopening on a limited basis.

Relative to sales for the first four months of this fiscal year, the profit was just slightly under \$100,000 which includes a large portion of Bartgis operation shutdown.

Upon motion duly made, seconded and carried,  
it was

"RESOLVED, that each and all of the acts and actions of the officers of the company for the fiscal year ending September 30, 1963, be and the same are hereby ratified, confirmed and adopted."

There being no further business, on  
motion duly made, seconded and carried, the meeting was  
adjourned at 3:40 P.M.

  
Secretary of the Meeting



APPENDIX L

Executive Offices

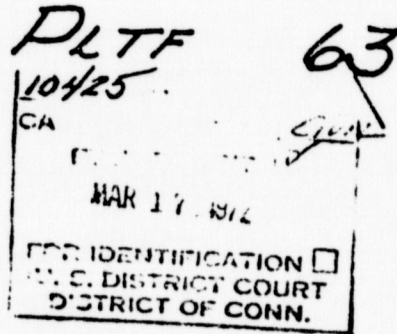
299 East St., New Haven, Conn. 06508  
Tel. (203) 787-7171

Plants

New Haven, Conn.  
Miami, Florida  
Beltsville, Maryland  
Richmond, Virginia  
West Hempstead, Long Island, N. Y.  
San Juan, P. R.

Designers and Manufacturers of  
Paper Boxboard, Folding Cartons  
and Corrugated Containers

BOA



PLAINTIFF'S

JUN 22 1966

EX. 6 ID.



*Report  
to  
Stockholders*

Six Months Ended March 31, 1964

Plaintiff's Exhibit 63

Appendix L-2

THE NEW HAVEN BOARD & CARTON COMPANY, INC.

STATEMENT OF OPERATIONS

(UNAUDITED)

	Six Months Ended March 31,	
	1964	1963
Net Sales	\$ 9,534,921	\$10,212,068
Costs and expenses:		
Cost of goods sold	8,175,019	9,331,071
Selling, administrative and general expenses	933,441	1,009,805
Depreciation of plant and equipment	279,433	267,150
Total costs and expenses	9,387,896	10,701,119
Operating Profit (loss)	147,025	( 489,051 )
Other Income — net:	52,211	45,141
Discount on Penn Mutual Note	455,600	—
Less — Interest Expense	46,555	71,140
Prov. for Income Taxes	42,370	12,000
Other Income — net	418,886	( 37,999 )
Net Profit (loss)	565,911	( 527,050 )
Earnings per share; based on 1,838,127 shares now outstanding	.31	(.29)



## Appendix L-3

## THE NEW HAVEN BOARD &amp; CARTON COMPANY, INC.

	March 31 1964	March 31 1963
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash	\$ 332,376	\$ 161,517
Accounts receivable -- net of reserves	2,395,682	1,912,293
Inventories	1,569,944	2,651,926
Investments -- Tax Free Bonds (At Cost)	198,269	—
Prepaid expenses	58,403	20,882
Total current assets	<u>4,754,674</u>	<u>4,752,618</u>
<b>Investments and other assets:</b>		
Investment in affiliated company -- cost	321,793	321,793
Miscellaneous investments -- cost	44,891	42,629
Land and building leased to affiliated company -- at cost less depreciation	357,013	371,629
Deferred charges	62,832	20,380
Total other assets	<u>786,529</u>	<u>756,431</u>
Property, plant and equipment -- cost	18,024,861	15,900,836
Less -- accumulated depreciation	12,114,444	10,559,023
Plant and equipment -- net	<u>5,910,417</u>	<u>5,341,813</u>
	<u><b>\$11,451,620</b></u>	<u><b>\$10,850,882</b></u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current Liabilities:</b>		
Notes payable	\$ 596,500	\$ 999,546
Accounts payable	987,409	741,388
Taxes accrued	495,322	296,816
Wages and expenses accrued	382,723	451,943
Long-term debt -- portion due within one year	101,892	235,000
Total current liabilities	<u>2,563,846</u>	<u>2,724,693</u>
Long-term debt -- net of current portion above	<u>276,876</u>	<u>2,295,000</u>
<b>Stockholders' Equity:</b>		
Common stock -- par \$1		
Issued 1,838,127 shares	1,838,127	460,353*
Capital surplus	5,915,884	4,805,208*
Retained earnings	826,887	565,628
Total stockholders' equity	<u>8,610,898</u>	<u>5,831,189</u>
	<u><b>\$11,451,620</b></u>	<u><b>\$10,850,882</b></u>

\* Common Stock & Capital Surplus in prior year reflects reduction of par value from \$10 to \$1

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ONLY COPY AVAILABLE

May 21, 1971

TO OUR STOCKHOLDERS:

Although the sales of The New Haven Board & Carton Company, Inc. in the first six months of its current fiscal year declined moderately to \$9,534,921, primarily as a result of the shutdown of the Baltimore Division, the Company's profits and financial condition improved materially.

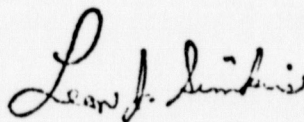
Net profit, including non-recurring income reflected in the current Company statement, amounted to \$565,911 or 31¢ per share, compared to a deficit of \$527,050 or a loss of 29¢ per share for the comparable period last year, based on present shares outstanding.

The Operating Profit for the current period amounted to \$111,021 compared to an Operating Loss of \$489,051 in the same period of the prior year.

The Company's cash resources have increased substantially. Its long-term debt has been reduced from \$2,295,000 to \$276,876. It should be noted that the above figures reflect only one month's earnings of the Miami Companies acquired in the Merger. X

Due to the increasing demands of our customers and a more realistic union approach, it became feasible to reopen the Baltimore Division. The Carton Plant commenced operations during the latter part of March. The Board Mill resumed production in May. It is anticipated that the resumption of operations in Baltimore will prove beneficial to the Company.

Respectfully yours,



Chairman of the Board and President

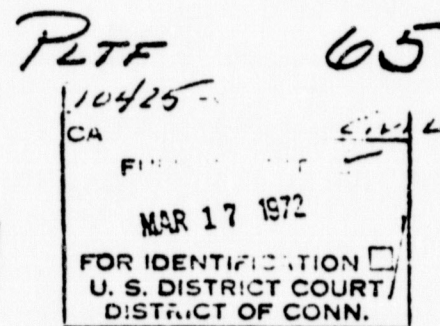


APPENDIX M

PLAINTIFF'S

JUN 22 1966

EX 5



Plaintiff's Exhibit 65

ONLY COPY AVAILABLE

# Annual Report

## 1964

THE NEW HAVEN BOARD & CARTON COMPANY, INC.

NEW HAVEN, CONNECTICUT

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**  
**OF**  
**THE NEW HAVEN BOARD & CARTON COMPANY, INCORPORATED**  
**JANUARY 18, 1965**

To The Stockholders:

NOTICE IS HEREBY GIVEN that the Annual Meeting of the Stockholders of The New Haven Board & Carton Company, Incorporated, will be held on Monday, January 18, 1965, at 10 o'clock in the forenoon, at the New Haven Lawn Club, 193 Whitney Avenue, New Haven, Connecticut, for the following purposes:

- (1) To elect Directors for the ensuing year.
- (2) To elect the company's auditors for the ensuing year.
- (3) To transact such other business as may properly come before the meeting or any adjournment thereof.

Only those Stockholders of the Company of record as of Monday, January 4, 1965, will be eligible to vote at the meeting or any adjournments thereof.

It is important that your stock be represented at the meeting. If you do not plan to attend the meeting in person, you are urged to sign, date and mail the enclosed Proxy immediately.

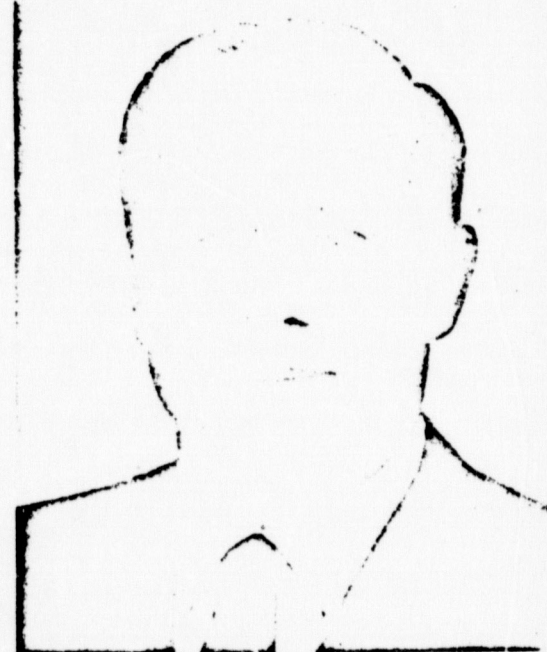
/s/ Jacob J. Siegal,  
*Secretary*

New Haven, Conn.  
January 6, 1965



# THE PRESIDENT'S MESSAGE

*Leon J. Simkins*  
PRESIDENT



## TO OUR STOCKHOLDERS:

IT GIVES me a great deal of pleasure to report a profit for the fiscal year ending September 30, 1964 of \$1,785,520 including non-recurring income of \$455,600 compared to a loss of \$831,702 last year. The past year was the first profitable year for the Company since 1958 and its earnings are the highest since 1952.

EARNINGS PER SHARE amounted to 97 cents including non-recurring income of 24 cents, as compared to a loss of 45 cents last year. Our current assets increased \$1,299,129 and our current liabilities decreased \$75,914. Long-term debt has been reduced from \$2,302,596 to \$253,420 and stockholders' equity increased from \$5,496,687 to \$9,813,373.

THE PAST YEAR has been an eventful one for the Company. Benner Box, Inc. and Miami Paper Board Mills, Inc., both of Miami, Florida, were merged with and into our Company and their profits from seven months of operation are reflected in our Company statement. With the rapid growth of their marketing area and with full integration of their operations with those of New Haven's, even greater benefits should accrue.

OUR BALTIMORE DIVISION, previously known as our Bartgis Division, was closed early in the year but was reopened on a partial basis due to the resolution of our labor problems.

ONLY COPY AVAILABLE

## CONCLUSION OF PRESIDENT'S MESSAGE

PUERTO RICO PACKAGING COMPANY, LTD., a folding carton manufacturer, was acquired and although its present operations are relatively small, the growth of the market for its products in Puerto Rico and Central American areas appears promising.

CONTINENTAL FOLDING PAPER BOX COMPANY, INC., a long established manufacturer of folding cartons, located in Ridgefield, New Jersey, was acquired in October. This acquisition is providing an additional outlet for our paperboard mills and a large portion of its sales is to the drug and pharmaceutical industries not previously served by our Company. Continental has a machinery development department which now makes it possible for our Carton Division to offer complete packaging programs to our customers.

DURING THE YEAR, over \$600,000 was invested in new facilities. This included 2 four-color 76" Miehle Offset printing presses in our New Haven Plant which has enabled us to produce our present lithographic printing requirements and has provided us with the needed capacity and flexibility to develop new sales of offset cartons.

OUR MIAMI PAPER BOARD MILLS DIVISION is completing the installation of additional drying facilities and a new electrical and steam generating plant which should not only increase its production substantially but result in overall operating economies.

NEW PULPERS and stock cleaning equipment are presently being installed in the New Haven and Baltimore paperboard mills.

MANAGEMENT is devoting its efforts to fuller utilization of our productive facilities through increased sales and acquisitions and is unrelentingly striving for increased efficiency and higher standards of quality. A long-range program is being developed for the installation of the most modern productive facilities in our industry and the recruiting and training of people of management potential to provide us with the depth and organization to enhance our further growth.

CONDITIONS in our industry remain extremely competitive and prices are depressed. Cost of raw materials and labor continue to increase and there is constant pressure on profit margins. The problems the Company has are formidable, and, although Management expects their solution, it is not anticipated that the current year's results will be as favorable as last.

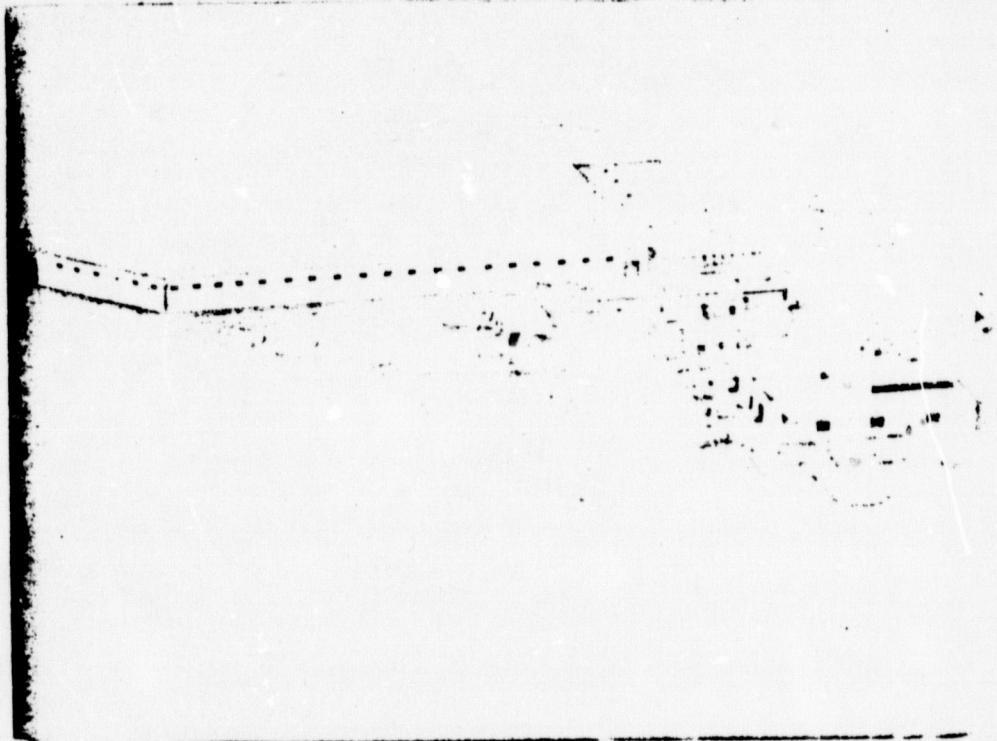
WE WISH TO THANK those employees who have exerted such great effort and to acknowledge the wise counsel of our Directors, without whose help we would have been unable to achieve these results.

December 28, 1964



# EXPANSION

The plants shown here are those recently acquired by the New Haven Board and Carton Company, Inc.



▲ The Miami Paper Board Mills and The Benner Box Divisions, Miami, Florida



◀ The Continental Folding Paper Box Co., Inc., Ridgefield, N.J.

# STATEMENT OF FINANC

BALANCE SHEET — SEPTEMBER 30, 1

## ASSETS

CURRENT ASSETS	September 30	
	1964	1963
Cash . . . . .	\$ 591,651	\$ 524,220
Receivables (Net of Reserves — 1964—\$63,954; 1963—\$38,873) . . . . .	2,295,892	1,808,367
Inventories (Note 2) . . . . .	2,472,134	1,865,102
Investment — Tax Free Bonds — Cost . . . . .	85,903	—
Prepaid Expense . . . . .	124,972	73,734
Total Current Assets . . . . .	<u>\$ 5,570,552</u>	<u>\$ 4,271,423</u>
OTHER ASSETS		
Investment and Advances to Subsidiary (Note 5) . . . . .	59,436	—
Other Investments (Note 1) . . . . .	321,793	329,781
Land and Buildings Leased — Cost Net of Depreciation . . . . .	349,705	364,325
Surrender Value of Officers' Life Insurance . . . . .	7,685	—
Deferred Charges . . . . .	76,731	12,090
Total Other Assets . . . . .	<u>\$ 815,350</u>	<u>\$ 706,196</u>
LAND, BUILDINGS, MACHINERY AND EQUIPMENT		
Cost . . . . .	17,426,150	15,024,872
Less — Depreciation to Date . . . . .	<u>11,445,217</u>	<u>10,729,252</u>
Net Value . . . . .	<u>\$ 5,980,933</u>	<u>\$ 5,195,620</u>
TOTAL ASSETS . . . . .	<u><u>\$12,366,835</u></u>	<u><u>\$10,173,239</u></u>

Appendix M-6



# IAL CONDITION

1964 AND 1963

Appendix M-7

## LIABILITIES and STOCKHOLDERS' EQUITY

	September 30	
	1964	1963
<b>CURRENT LIABILITIES</b>		
Notes Payable - Bank . . . . .	\$ 250,000	\$ 950,000
Accounts Payable - Trade . . . . .	1,147,016	730,168
Federal and State Corporation Taxes Payable (Note 6) . . . . .	58,389	28,925
Accrued Expense . . . . .	440,371	412,520
Notes Payable - Other . . . . .	307,354	—
Current Portion of Long Term Debt . . . . .	96,912	252,343
Total Current Liabilities . . . . .	<u>\$ 2,300,042</u>	<u>\$ 2,373,956</u>
<b>LONG TERM DEBT</b> . . . . .	<u>\$ 253,420</u>	<u>2,302,596</u>
<b>STOCKHOLDERS' EQUITY</b>		
Common Stock - Par Value \$1.00		
Authorized 2,000,000 Shares; Issued		
and Outstanding 1,838,127 Shares as		
at September 30, 1964 . . . . .	1,838,127	4,603,530
Capital Surplus . . . . .	5,960,068	662,031
Retained Earnings . . . . .	2,046,496	260,976
Total . . . . .	<u>\$ 9,844,691</u>	<u>\$ 5,526,537</u>
Less - Treasury Stock --- 2,337 Shares--Cost . . . . .	31,318	29,850
Total Stockholders Equity . . . . .	<u>\$ 9,813,373</u>	<u>\$ 5,496,687</u>
<b>TOTAL LIABILITIES AND STOCKHOLDERS EQUITY</b> . . . . .	<u><u>\$12,366,835</u></u>	<u><u>\$10,173,239</u></u>

## NOTES TO FINANCIAL STATEMENT

SEPTEMBER 30, 1964

### NOTE 1 — OTHER INVESTMENTS:

The Company owns 875 shares of the 2,500 shares outstanding Common Stock of the Grinnell Lithographic Company, Inc. of 1401, New York, acquired March 1, 1961. The stock is closely owned with no established market value. Grinnell's Financial Statements indicate its Fixed Assets were restated to reflect appraisal valuation. Through this revaluation, the Company's interest expense is investment at cost.

The Company at the time of stock acquisition also purchased land and buildings occupied by Grinnell and leased these properties to Grinnell for four years with option to repurchase.

### NOTE 2 — INVENTORIES:

All inventories were priced on a basis consistent with methods used in the previous year's valuation, on a basis in accordance with generally accepted accounting standards.

### NOTE 3 — GUARANTY:

The Company has leased trucking equipment from the New Haven Truck Rental, Inc. and has guaranteed payment of lessors equipment obligations in the amount of \$47,456 as of September 30, 1964. These obligations are to be fully paid by November, 1965. Assets pledged by lessor are substantially in excess of \$47,456.

### NOTE 4 — COMPANY ACQUISITIONS:

Through an exchange of stock, the Company acquired the following subsidiary companies on February 29, 1964:

Miami Paper Board Mills, Inc.	Benner Box, Inc.
Samson Properties, Inc.	Simkins Properties, Inc.

Miami Paper Board Mills, Inc. and Benner Box, Inc. were merged with the Company on February 29, 1964. Samson Properties, Inc. and Simkins Properties, Inc. were merged with the Company on August 29, 1964. Net Income of Samson Properties, Inc. and Simkins Properties, Inc. of \$23,000 for the period March 1, 1964 to August 29, 1964 are not included in the operating figures.

### NOTE 5 — INVESTMENT AND ADVANCES TO SUBSIDIARY:

Company acquired all of the outstanding stock of the Puerto Rico Packaging Company, Ltd. This Company's operations have not been included in the operating figures. Cost of stock and advances to Puerto Rico Packaging Company, Ltd. amounted to \$59,456 on September 30, 1964.

### NOTE 6 — CORPORATION INCOME TAXES:

As a result of the available loss carryforward, no liability is recognized for current U. S. Corporate Income Taxes. Income Taxes shown in the amount of \$10,590 cover Income Taxes due to State Governments that do not allow credit for a loss carryforward.

### NOTE 7 — SUBSEQUENT EVENTS:

On October 1, 1964 the warehouse building at 301 Grand Avenue, New Haven, Connecticut was sold to the City of New Haven in lieu of contribution, pursuant to the City of New Haven's Redevelopment Program. A warehouse has been leased in Branford, Connecticut to replace the same.

On October 21, 1964, the Company acquired all the stock of the Continental Folding Paper Box Company, Inc. of Jersey. The acquired company is being operated as a wholly owned subsidiary.



**ACCOUNTANTS' REPORT**

November 12, 1964

The New Haven Board and Carton Company, Inc.  
250 East Street  
New Haven, Connecticut 06508

Gentlemen:

We have examined the accounts and records of  
**THE NEW HAVEN BOARD AND CARTON COMPANY, INC.**  
as of September 30, 1964.

Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and other auditing procedures we considered necessary in the circumstances.

In our opinion the accompanying Statements and Schedules present fairly the Financial Condition of **THE NEW HAVEN BOARD AND CARTON COMPANY, INC.** at September 30, 1964, and the results of its operations for the Year Then Ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Very truly yours,

**SKLAR, CARMOSIN AND COMPANY**  
*Certified Public Accountants*

**STATEMENT OF INCOME & RETAINED EARNINGS****YEARS ENDED SEPTEMBER 30, 1964 & SEPTEMBER 30, 1963**

	1964	1963
Net sales . . . . .	\$20,054,500	\$20,819,048
Cost of sales . . . . .	<u>17,082,551</u>	<u>19,775,607</u>
Gross profit . . . . .	2,971,949	1,043,441
Selling and Administrative expense . . . . .	<u>1,587,439</u>	<u>1,860,143</u>
Operating profit (loss) . . . . .	✓ 1,384,510	(816,702)
Non-recurring income . . . . .	<u>455,600</u>	<u>—</u>
Net income before taxes (Note 4) . . . . .	1,840,110	(816,702)
Provision for income taxes (Note 6) . . . . .	<u>54,590</u>	<u>15,000</u>
NET PROFIT (loss) . . . . .	1,785,520	(831,702)
Retained Earnings, beginning of year . . . . .	<u>260,976</u>	<u>1,092,678</u>
Retained Earnings, end of year . . . . .	\$ 2,046,496	\$ 260,976
Net Profit Per Share on shares outstanding 9/30/64.		
Net income from operations . . . . .	\$ .73	(.45)
Non-recurring income . . . . .	\$ .24	<u>—</u>
TOTAL . . . . .	\$ .97	(.45)
Depreciation Charged to Operations . . . . .	\$ 598,741	\$ 529,673

**DIRECTORS**

LEON J. SIMKINS, *Chairman*  
 STERLING R. CHATFIELD  
 WILLIAM B. GUMBART  
 JOHN L. MCCREERY  
 LEON MELTZER

EDWIN W. MEDINGER  
 ROBERT T. ROSSUM  
 JACOB J. SIEGAL  
 DOROTHY SIMKINS  
 MORTON H. SIMKINS

**OFFICERS**

LEON J. SIMKINS . . . . . *President*  
 MORTON H. SIMKINS . . . . . *Executive Vice President and Treasurer*  
 FRANCIS S. WAKEMAN . . . . . *Senior Vice President*  
 ROBERT T. ROSSUM . . . . . *Vice President*  
 HARRY M. BULL . . . . . *Vice President*  
 JACOB J. SIEGAL . . . . . *Secretary*  
 WILLIAM S. MEDINGER . . . . . *Controller*  
 HAROLD A. WILSON . . . . . *Assistant Secretary*

**AUDITORS**

SKLAR, CARMOSIN & Co., Certified Public Accountants  
 Juniper and Walnut Streets, Philadelphia, Pennsylvania 19107

**COUNSEL**

MELTZER & SCHIFFRIN  
 1529 Walnut Street, Philadelphia, Pennsylvania 19102  
 GUMBART, COBBIN, TYLER & COOPER  
 205 Church Street, New Haven, Connecticut 06509  
 BALDWIN, JARMAN & NORRIS  
 Fidelity Building, Baltimore, Maryland 21201

**TRANSFER AGENT**

THE FIRST NEW HAVEN NATIONAL BANK  
 1 Church Street, New Haven, Connecticut 06502





**EXECUTIVE AND GENERAL SALES OFFICES**

259 EAST STREET • NEW HAVEN, CONNECTICUT 06508

TELEPHONE: 203 787-7171

**PLANTS**

NEW HAVEN, CONNECTICUT

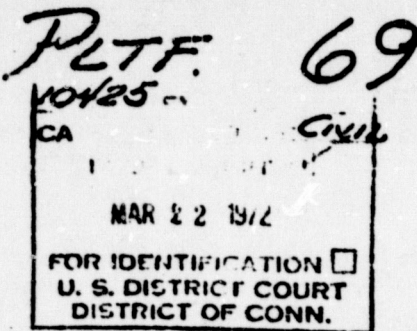
MIAMI, FLORIDA

ILCHESTER, MARYLAND

RICHMOND, VIRGINIA

WEST HEMPSTEAD, LONG ISLAND, N.Y.

SAN JUAN, PUERTO RICO



APPENDIX N

RAISAL COMPANY

CHICAGO MILWAUKEE NEW YORK

ATLANTA  
BALTIMORE  
BOSTON  
BUFFALO  
CHARLOTTE  
CINCINNATI  
CLEVELAND  
DALLAS  
DETROIT  
MANILA, P.I.



KANSAS CITY  
LOS ANGELES  
MIAMI  
MINNEAPOLIS  
NEW ORLEANS  
PHILADELPHIA  
PITTSBURGH  
ST. LOUIS  
SAN FRANCISCO  
WASHINGTON  
TORONTO, ONT.

MILWAUKEE I

525 EAST MICHIGAN STREET

January 22, 1964

AIRMAIL, SPECIAL DELIVERY

Mr. Leon J. Simkins,  
President  
The New Haven Board & Carton Company Inc.  
New Haven 8, Connecticut

Dear Mr. Simkins:

We are enclosing for your review one unsigned draft of our appraisal report on Benner Box Inc. and Miami Paper Board Mills Inc., and as you requested an additional draft copy is being sent to Miami.

(X) We have not yet had the opportunity of checking the report for mathematical accuracy and there may be some errors which require adjustment, but you may be assured that the values stated will remain unchanged. We trust that the report will prove to your satisfaction, but naturally we welcome your critical analysis and will give careful consideration to any comments you have to offer.

We will be in a position to deliver our final report to you promptly after receiving your views. (X)

We agreed to submit ten copies of this report to you and we would like to have your directions as to their distribution.

I have just noticed that you request a copy of the report be sent to Mr. Leon Meltzer in Philadelphia, and since we do not have Mr. Meltzer's address an additional draft is being sent to you at New Haven for onward transmission.

Yours very truly,

THE AMERICAN APPRAISAL COMPANY

*C. E. O. Walker*

Assistant Vice President

C. E. O. Walker  
cc

Enclosures

✓ cc: Mr. L. J. Simkins, President  
Benner Box Inc.  
Miami, Florida

Plaintiff's Exhibit 69



**THE AMERICAN APPRAISAL COMPANY**  
625 E. MICHIGAN STREET MILWAUKEE 1, WIS.

TO CONFIRMATION

MR. L. J. SIMKINS  
PRESIDENT

THE NEW HAVEN BOARD & CANTON COMPANY INC.

NEW HAVEN 8, CONNECTICUT

PERSONAL

VIA AIR MAIL SPECIAL DELIVERY JANUARY 22 1964

CONTENTS OF SHIPMENT

BENNER BOX INC. AND MIAMI  
PAPER BOARD MILLS INC.  
Miami, Florida

1 - Appraisal Report - 1 Draft Copy

8/31/63

#65256

THE AMERICAN APPRAISAL COMPANY

BY BAK/GB/301

THIS SHIPMENT IS PACKED IN GOOD ORDER AND SHOULD BE RECEIVED BY YOU IN LIKE  
CONDITION. IF NOT DELIVERED WITHIN A REASONABLE TIME, PLEASE ADVISE US.  
Form 44 THE GARY REGISTER COMPANY

APPENDIX O

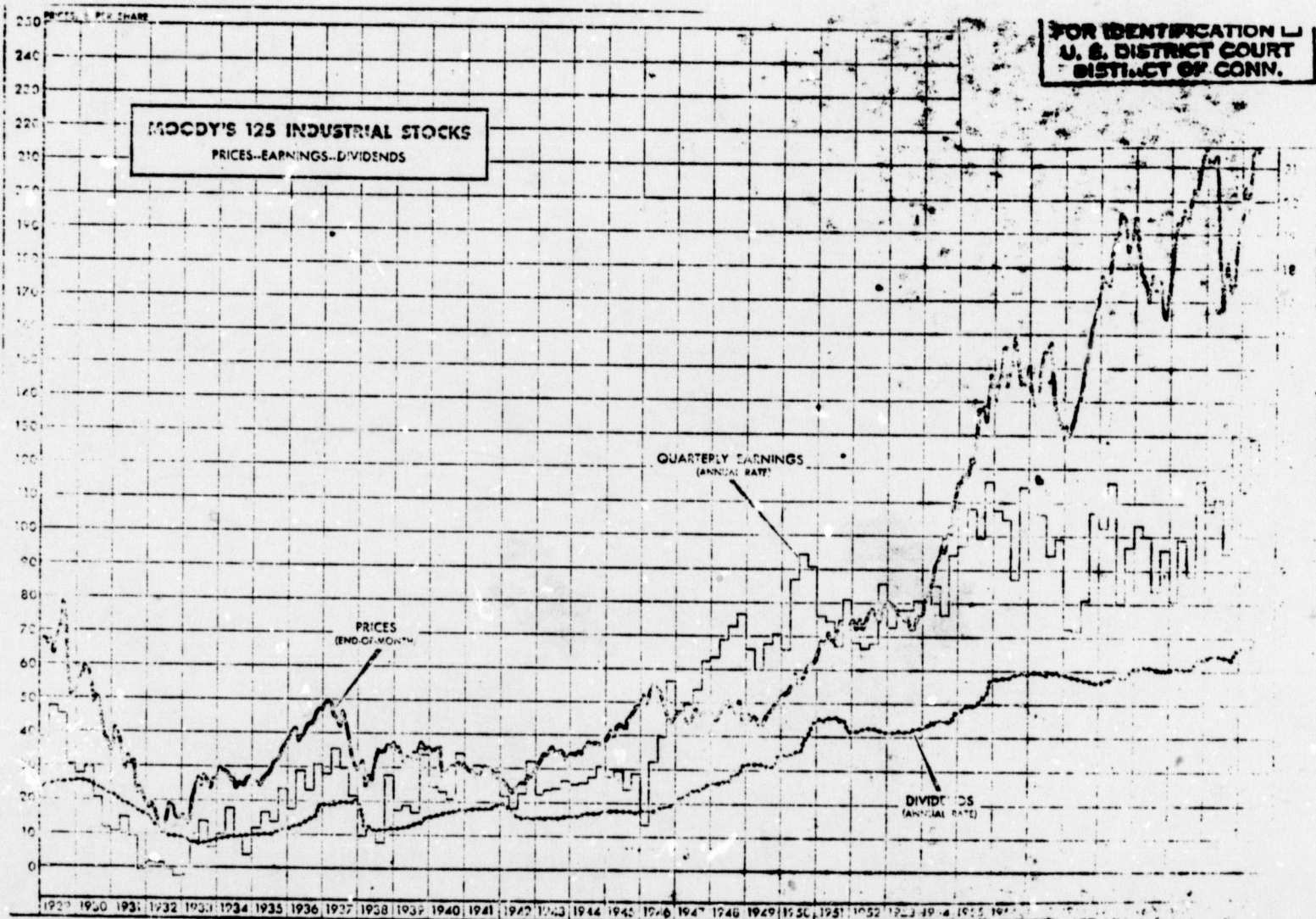
Defendant's Exhibit O



APPENDIX P

Defendant's Exhibit P

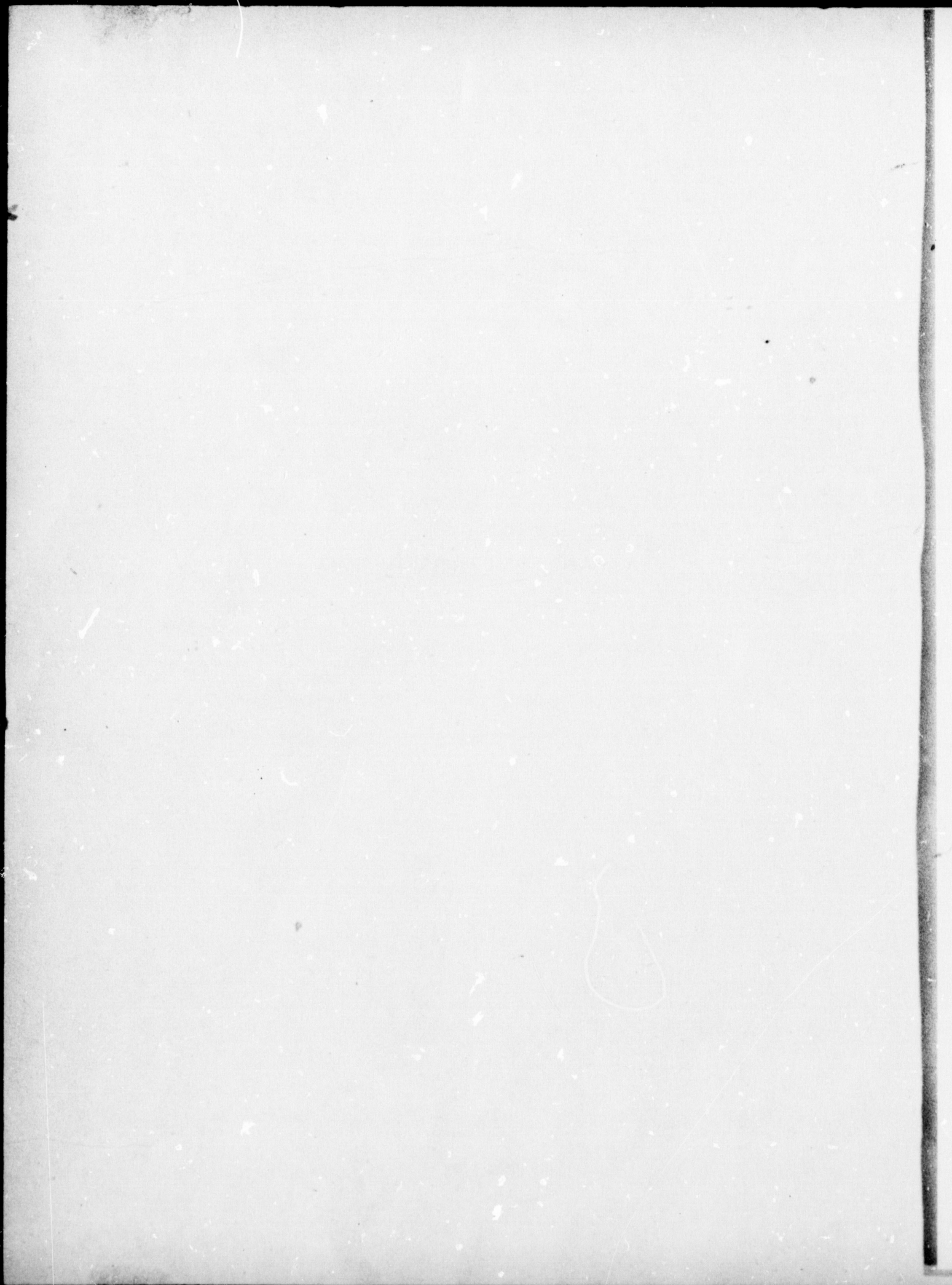
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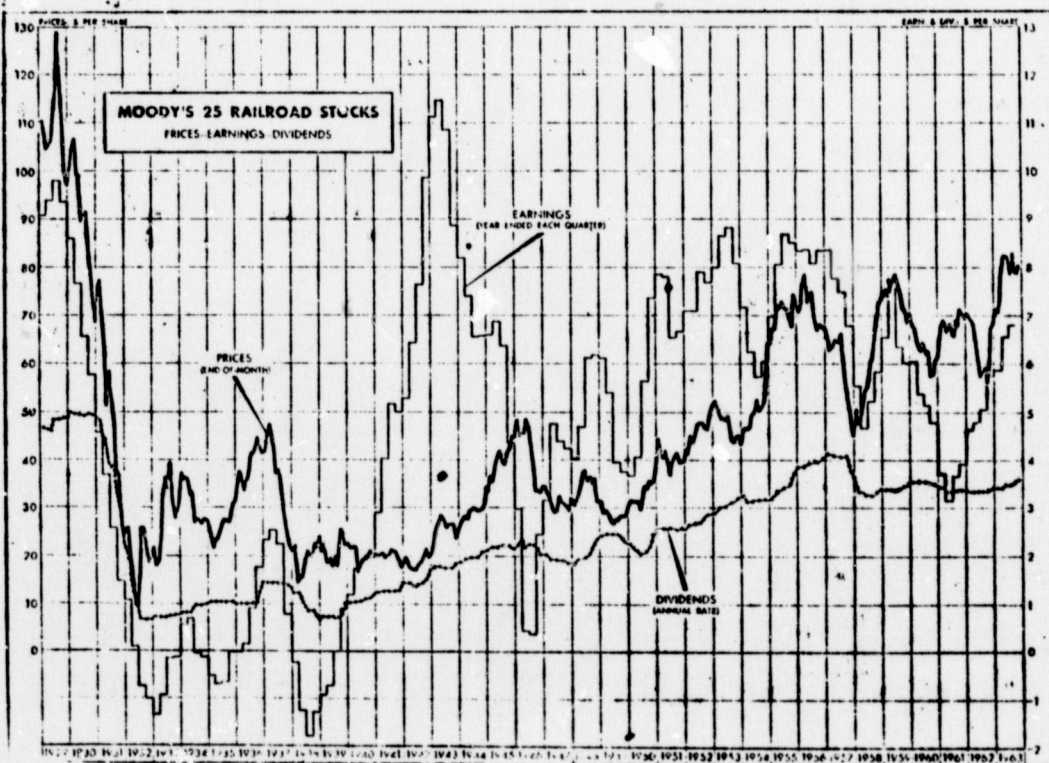
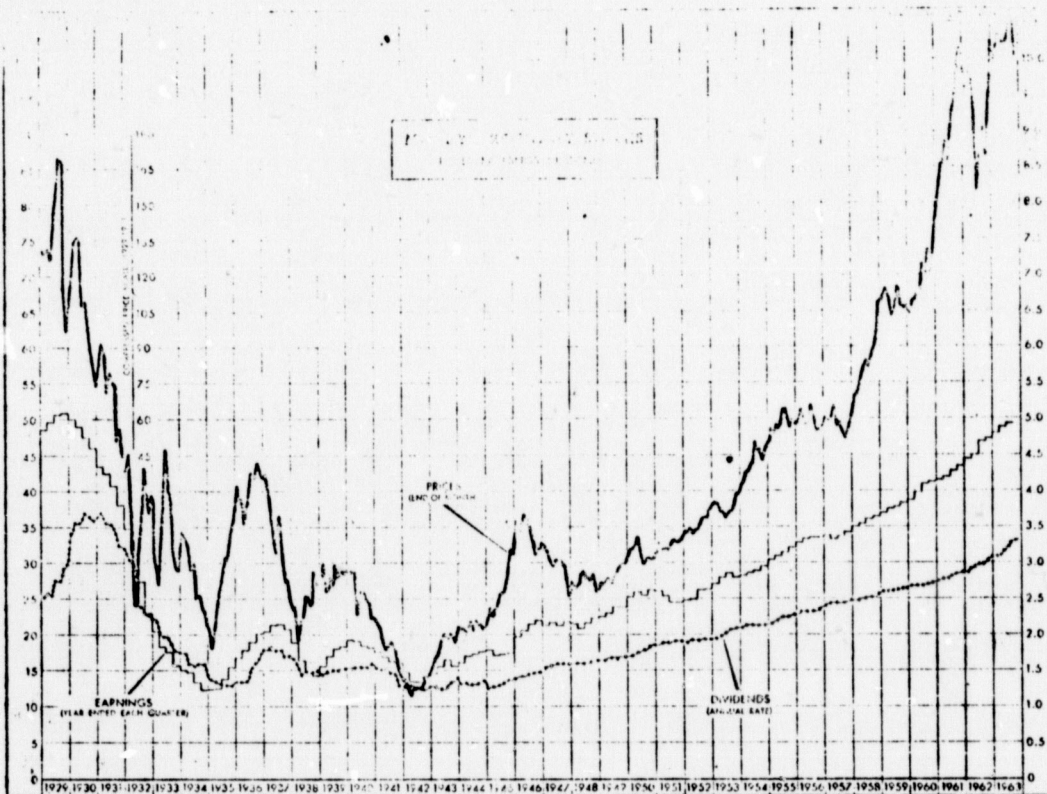
APPENDIX Q

Defendant's Exhibit Q



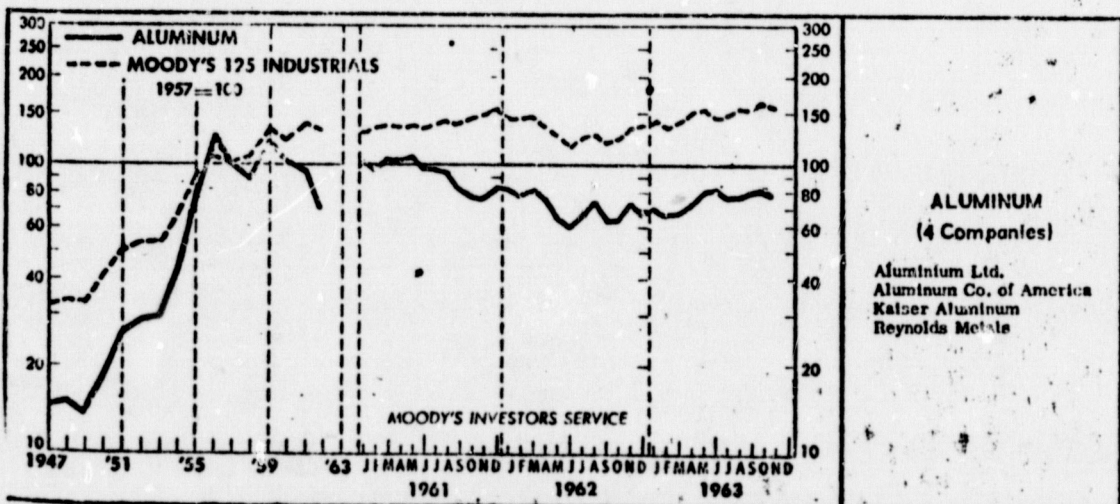
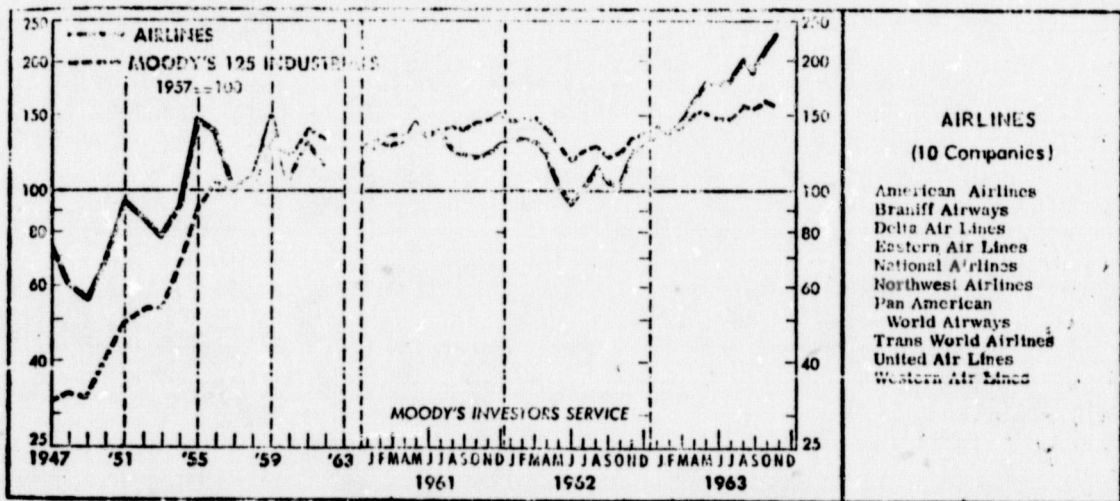
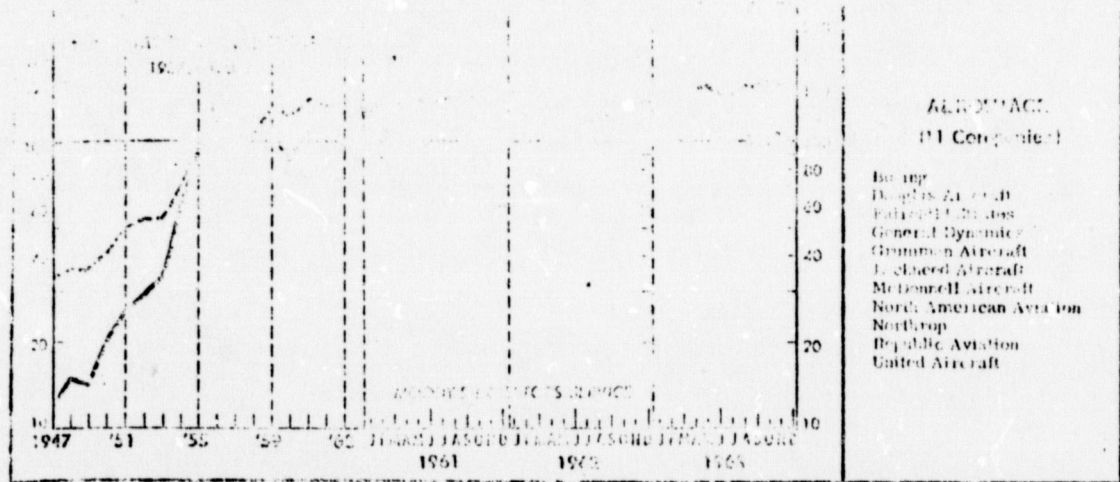


# Appendix Q-2

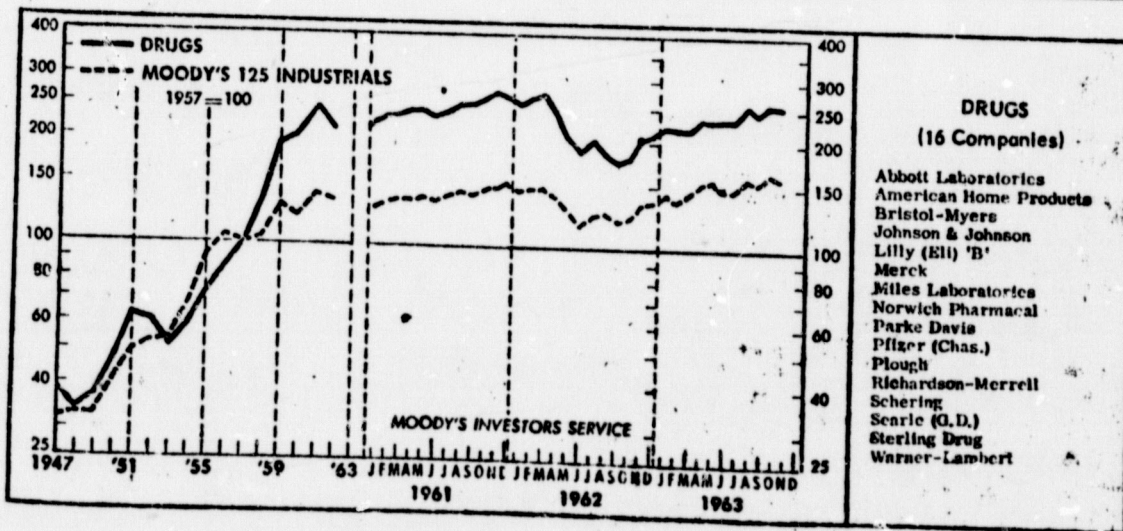
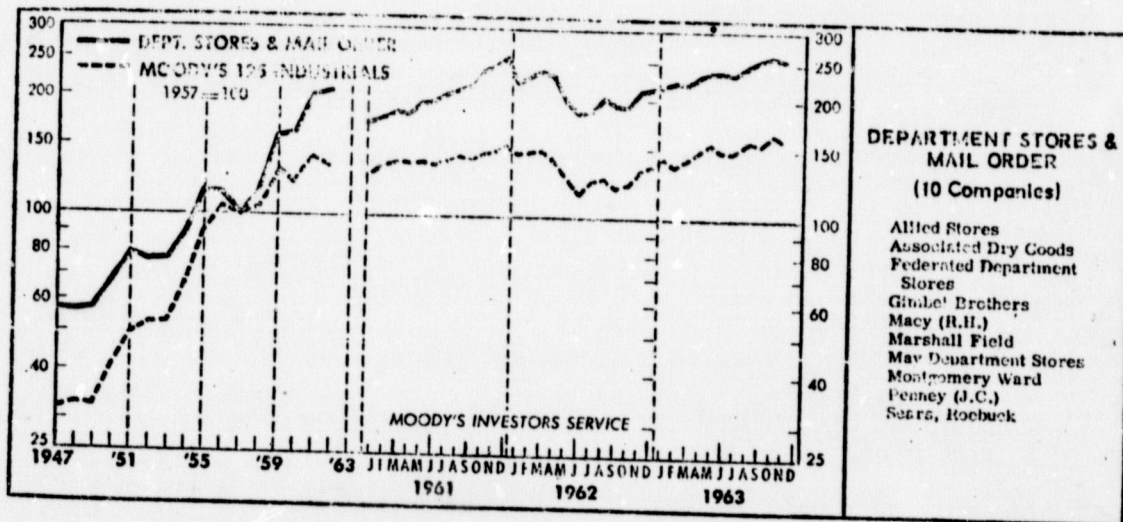
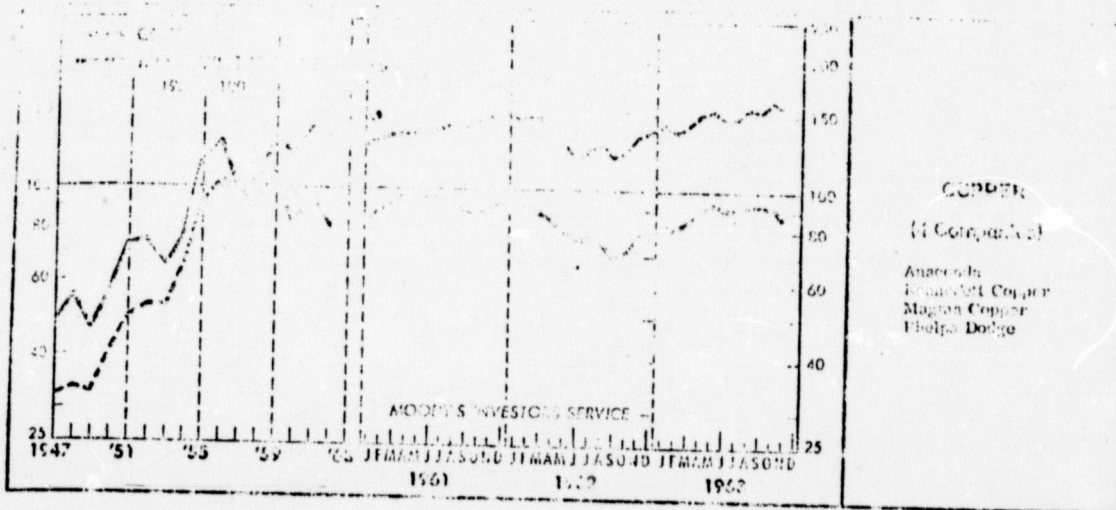




# Appendix Q-3

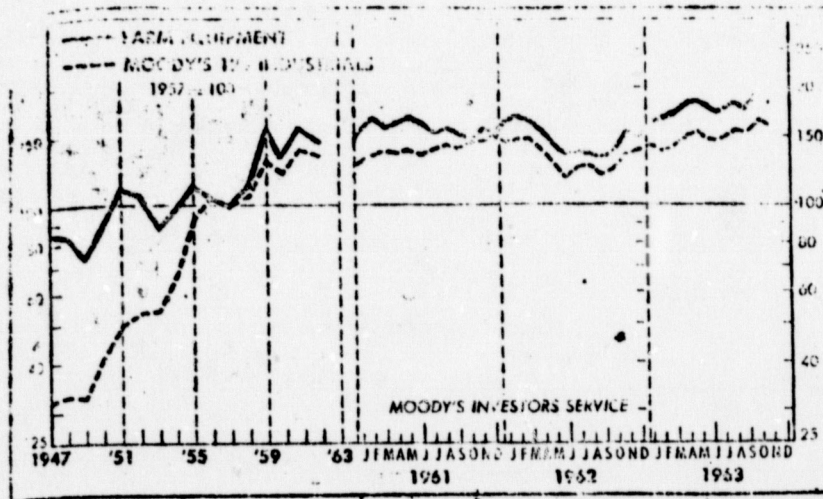


## Appendix Q-4



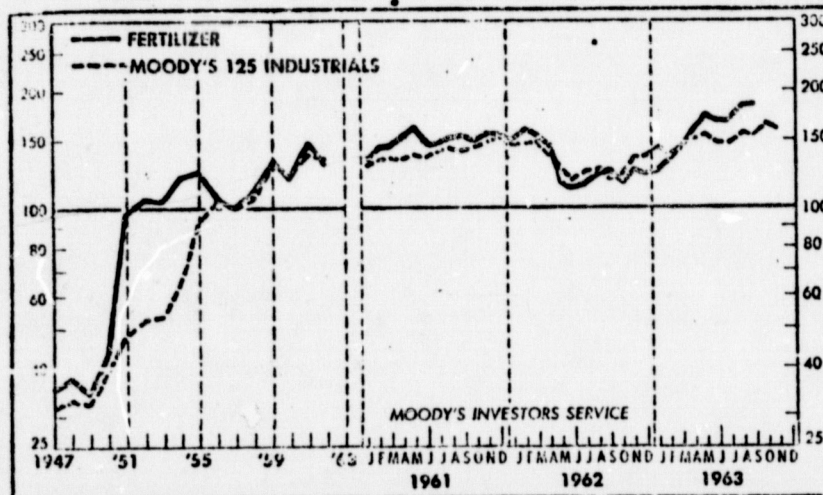


# Appendix Q-5



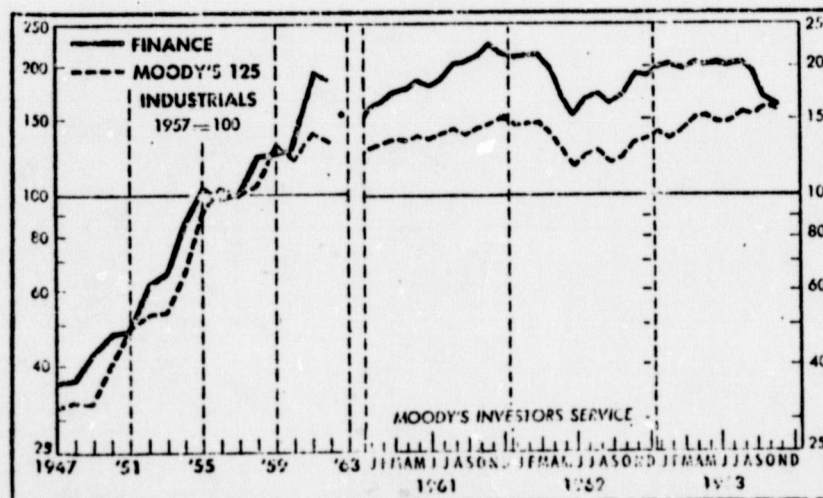
## FARM EQUIPMENT (7 Companies)

Caterpillar  
Deere  
International Harvester



## FERTILIZER (3 Companies)

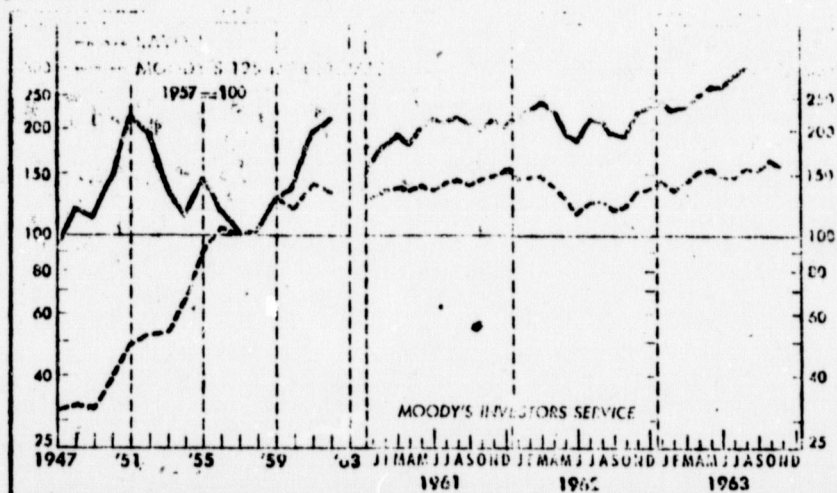
American Agricultural  
Chemical  
International  
Minerals & Chemical  
Spencer Chemicals



## FINANCE (7 Companies)

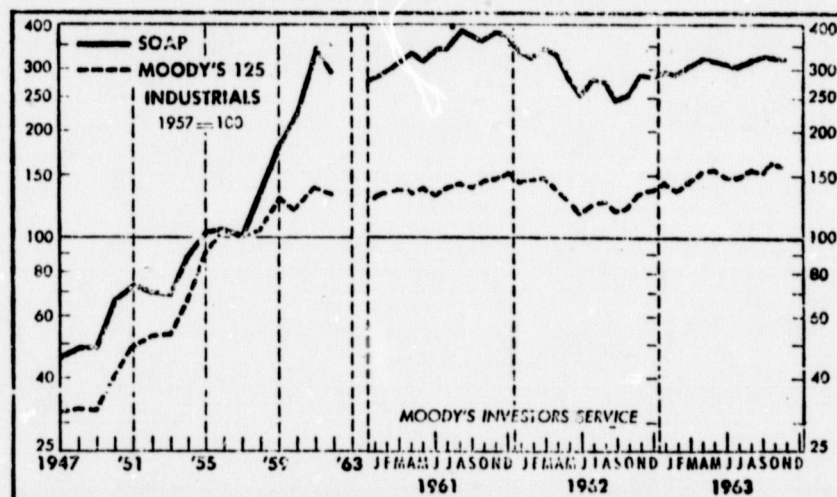
American Investment  
Associates Investment  
Beneficial Finance  
C.I.T. Financial  
Commercial Credit  
Heiler, Walter E.  
Household Finance

# Appendix Q-6



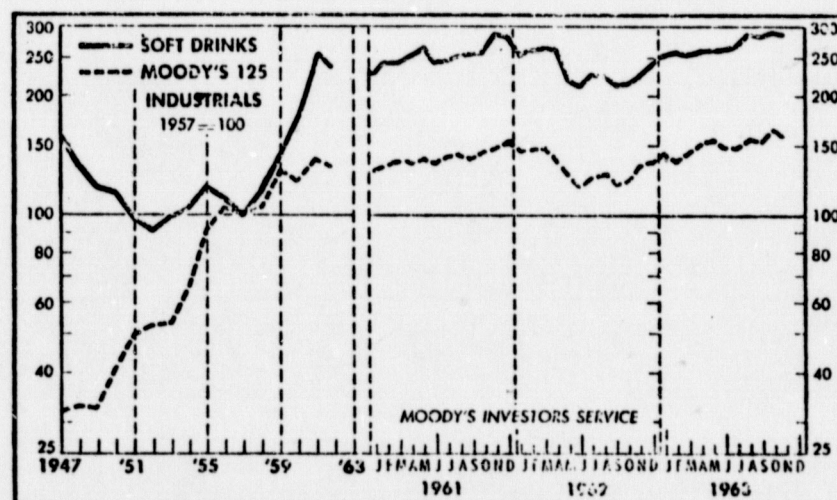
## RAYON (3 Companies)

American Ray  
American Viscose  
Celanese



## SOAP (2 Companies)

Colgate-Palmolive  
Procter & Gamble

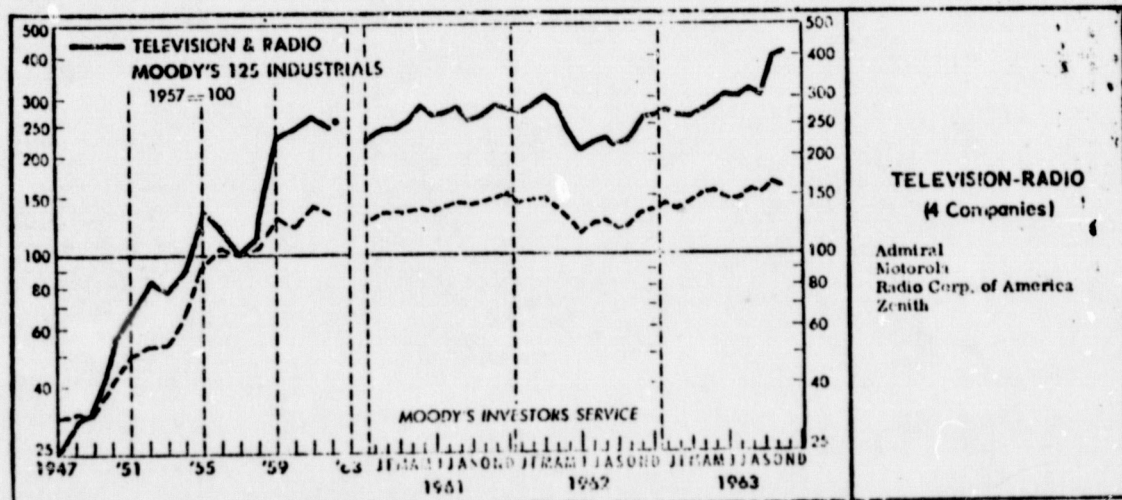
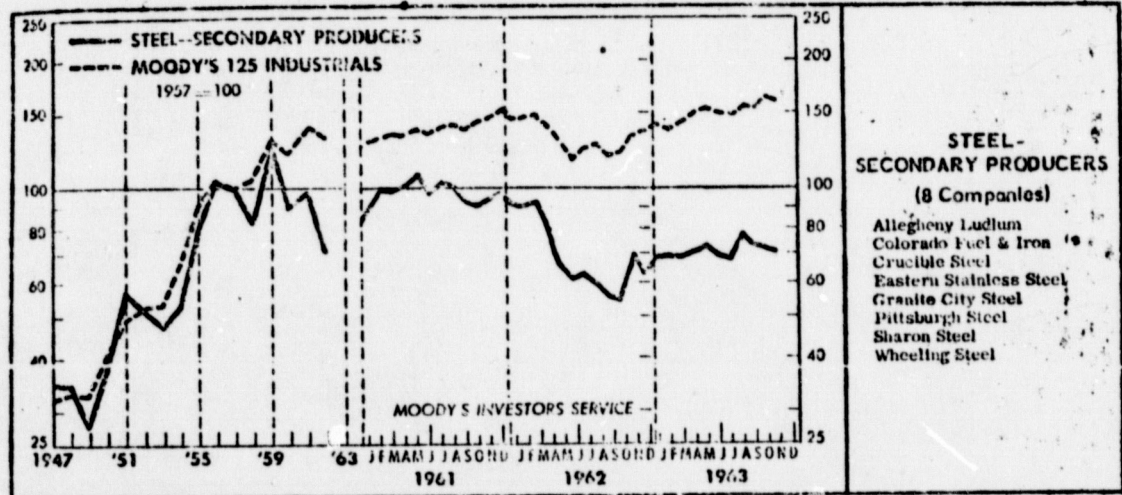
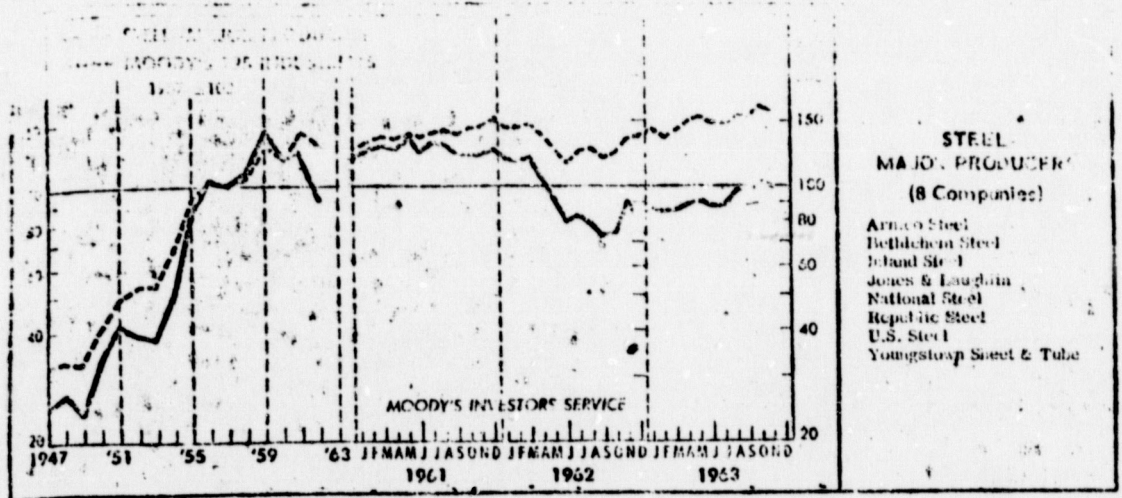


## SOFT DRINKS (4 Companies)

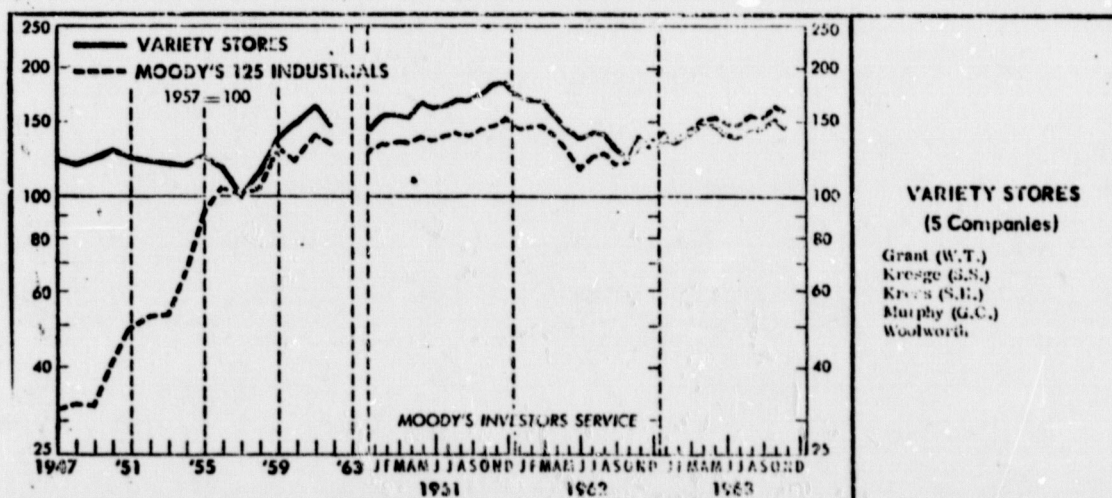
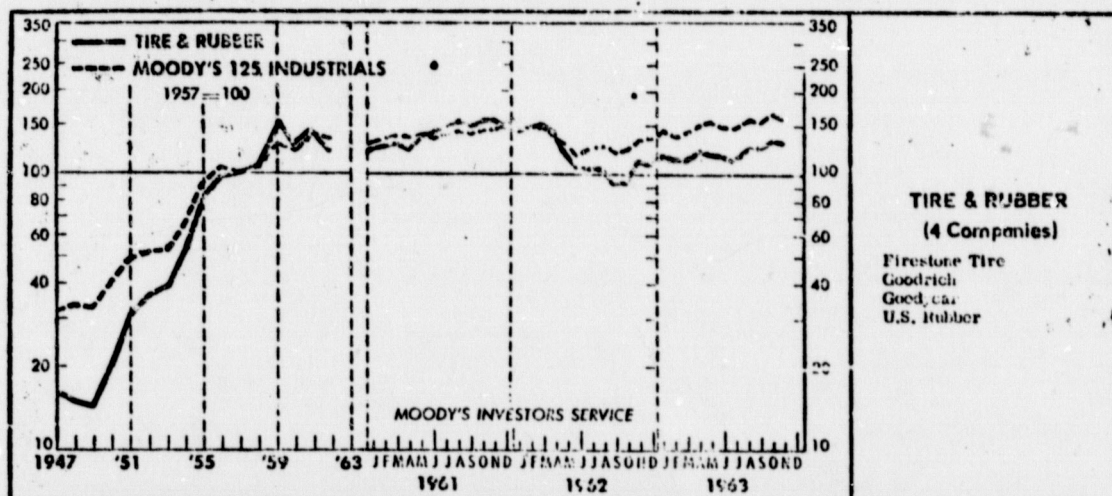
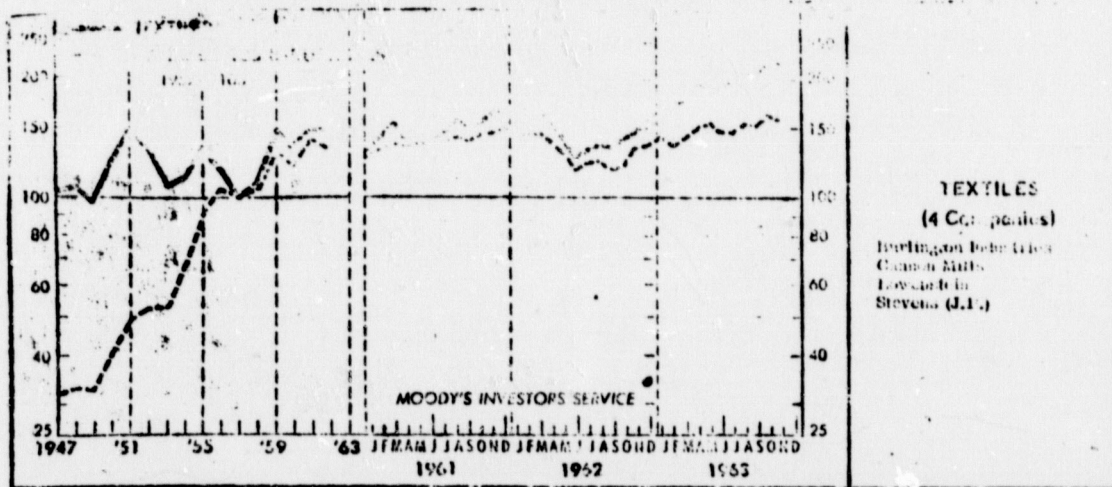
Canada Dry  
Coca-Cola  
Dr. Pepper  
Pepsi-Cola



# Appendix Q-7



# Appendix Q-8





# APPENDIX R

Def's EXHIBIT "R"

How to Use This Appendix

DEFENDANT'S EXHIBIT "R"

In this appendix, the first group of ratios in each industry group is derived from the "14 Ratios" which are the top 14 ratios in each industry group. The top 14 ratios are the ratios which are the most widely used and the bottom figure is the least widely used. They are calculated as follows: Yearly sales divided by the number of years reporting, of corporations whose tangible net worth, with few exceptions, exceed \$250,000. The financial ratios are then arranged in the "14 Ratios" on each of the 14 ratios. The ratios are then printed on data processing cards, and arranged into industry groups. After this, ratio figures are arranged so that the best ratio figure is at the top, the weakest at the bottom. The figure which falls just in the middle of this series becomes the median for that ratio in that line of business. The figure halfway between the median and the highest term of the series is the upper quartile; and the term halfway between the median and the bottom of the series is the lower quartile. The purpose of these interquartile ranges is to show an upper and lower limit area without reducing the extremes either at the top or the bottom of the series. After the first of the "14 Ratios" has been compiled for a particular industry, the identical process is followed for the remaining 13 ratios in this industry group, and then for remaining industry groups.

## CURRENT ASSETS TO CURRENT DEBT

Current Assets are divided by total Current Debt. Current Assets are the sum of cash, notes and accounts receivable (less reserves for bad debt), advances on merchandise, merchandise inventories, and liquid, Federal, State and Municipal securities not in excess of market value. Current Debt is the total of all liabilities falling due within one year. This is one test of solvency.

## NET PROFITS ON NET SALES

Obtained by dividing the net earnings of the business, after taxes, by net sales (the dollar volume less returns, allowances, and cash discounts). This important yardstick in measuring profitability should be related to the ratio which follows.

## NET PROFITS ON TANGIBLE NET WORTH

Tangible Net Worth is the equity of stockholders in the business, as obtained by subtracting total liabilities from total assets, and then deducting intangibles. The ratio is obtained by dividing Net Profits after taxes by Tangible Net Worth. Tendency is to look increasingly to this ratio as a final criterion of profitability. Generally, a relationship of at least 10 per cent is regarded as a desirable objective for providing dividends plus funds for future growth.

## NET PROFITS ON NET WORKING CAPITAL

Net Working Capital represents the excess of Current Assets over Current Debt. This margin represents the cushion available to the business for carrying inventories and receivables, and for financing day-to-day operations. The ratio is obtained by dividing Net Profits, after taxes, by Net Working Capital.

## NET SALES TO TANGIBLE NET WORTH

Net Sales are divided by Tangible Net Worth. This gives a measure of relative turnover of invested capital.

## NET SALES TO NET WORKING CAPITAL

Net Sales are divided by Net Working Capital. This provides a guide as to the extent the company is turning its working capital and the margin of operating funds.

## COLLECTION PERIOD

Annual net sales are divided by 365 days to obtain average daily credit sales and then the average daily credit sales are divided into notes and accounts receivable, including any discounted. This ratio is helpful in analyzing the collectibility of receivables. Many feel the collection period

should not exceed the net maturity indicated by selling terms by more than 10 to 15 days. When comparing the collection period of one concern with that of another, allowances should be made for possible variations in selling terms.

## NET SALES TO INVENTORY

Dividing annual Net Sales by Merchandise Inventory as carried on the balance sheet. This quotient does not yield an actual physical turnover. It provides a yardstick for comparing stock-to-sales ratios of one concern with another or with those for the industry.

## FIXED ASSETS TO TANGIBLE NET WORTH

Fixed Assets are divided by Tangible Net Worth. Fixed Assets represent depreciated book values of building, leasehold improvements, machinery, furniture, fixtures, tools, and other physical equipment, plus land, if any, and valued at cost or appraised market value. Ordinarily, this relationship should not exceed 100 per cent for a manufacturer, and 75 per cent for a wholesaler or retailer.

## CURRENT DEBT TO TANGIBLE NET WORTH

Derived by dividing Current Debt by Tangible Net Worth. Ordinarily, a business begins to pile up trouble when this relationship exceeds 80 per cent.

## TOTAL DEBT TO TANGIBLE NET WORTH

Obtained by dividing total current plus long term debts by Tangible Net Worth. When this relationship exceeds 100 per cent, the equity of creditors in the assets of the business exceeds that of owners.

## INVENTORY TO NET WORKING CAPITAL

Merchandise inventory is divided by Net Working Capital. This is an additional measure of inventory balance. Ordinarily, the relationship should not exceed 80 per cent.

## CURRENT DEBT TO INVENTORY

Dividing the Current Debt by Inventory yields yet another indication of the extent to which the business relies on funds from disposal of unsold inventories to meet its debts.

## FUNDED DEBTS TO NET WORKING CAPITAL

Funded Debts are all long term obligations, as represented by mortgages, bonds, debentures, term loans, serial notes, and other types of liabilities maturing more than one year from statement date. This ratio is obtained by dividing Funded Debt by Net Working Capital. Analysts tend to compare Funded Debts with Net Working Capital in determining whether or not long term debts are in proper proportion. Ordinarily, this relationship should not exceed 100 per cent.

# Wholesaling

Line of Business (and Number of Concerns reporting)	Current assets to current debt		Net profits on net sales		Net profits on tangible net worth		Net profits on net working capital		Net sales to tangible net worth		Net sales to net working capital		Collection period		Net sales to inventory		Fixed assets to tangible net worth		Current debt to inventory		Total debt to tangible net worth		Inventory to net working capital		Current debt to net working capital		Funded debt to net working capital	
	Times	Per cent	Times	Per cent	Times	Per cent	Times	Per cent	Times	Per cent	Times	Per cent	Days	Times	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	
5077*	2.51	2.29	12.97	17.00	7.52	5.11	36	9.4	6.1	42.1	103.1	59.0	55.7	10.4														
Air Cond'g. & Refrig'n. Equip. 1437	2.06	1.60	8.93	9.55	5.04	6.63	46	6.8	10.9	84.4	174.5	95.2	105.5	26.6														
5035	1.53	0.60	5.23	6.11	3.50	4.44	64	4.9	24.0	142.2	262.8	154.5	145.9	65.3														
Apparel and Accessories 11029	2.69	1.93	11.23	14.03	8.42	10.57	31	13.7	2.0	18.1	72.5	52.3	76.4	15.5														
5013	2.00	0.76	4.70	5.61	5.14	6.77	45	7.8	6.0	76.3	59.2	52.6	112.6	41.2														
Automobile Parts & Access. 12121	1.65	0.21	1.12	1.21	3.72	4.22	69	4.9	15.9	113.9	241.7	125.0	177.5	69.3														
5012	4.54	3.28	12.43	17.22	4.92	6.65	29	6.6	7.2	22.1	45.6	70.9	37.0	10.9														
Automobile Parts & Access. 12121	2.91	1.66	7.16	8.73	3.70	4.53	36	5.2	14.3	40.6	76.0	67.4	63.1	23.2														
5072	2.07	0.73	2.65	3.52	2.49	3.13	44	3.6	26.9	80.1	111.6	121.0	89.4	44.0														
Chemicals & Allied Equip. 1511	4.16	4.40	17.65	31.04	5.46	9.26	33	16.8	4.6	27.9	1.5	20.5	48.7	2.4														
5074	2.78	2.22	9.64	13.79	4.33	5.72	43	10.4	16.1	42.0	122.2	55.4	112.7	20.1														
Cigars, Cigs. & Tobacco 1211	1.77	1.01	6.31	6.65	2.60	3.50	59	8.2	22.2	67.5	137.9	55.0	246.5	134.7														
5074	3.03	4.66	16.17	16.04	24.71	29.14	12	30.7	5.7	36.3	74.3	57.5	105.9	12.0														
Cigars, Cigs. & Tobacco 1211	2.62	0.71	6.42	7.71	14.40	18.32	15	20.2	12.2	73.7	110.7	57.5	105.9	12.0														
5074	1.75	0.11	2.22	3.56	10.15	12.12	22	15.9	24.1	141.2	205.1	133.2	177.0	34.6														

Appendix R-2

																1965
	2.54	12.25	21.79	4.50	5.79	35	9.9	16.4	20.6	53.3	54.3	44.4	17.3			
	2.74	12.25	21.79	2.94	3.15	50	5.7	27.3	32.6	46.9	67.6	60.0	47.9			
	1.14	1.37	4.23	4.31	2.10	4	3.2	55.2	55.2	107.4	96.4	94.1	71.7			
100	2.74	15.37	39.77	4.71	10.17	27	16.4	21.4	15.4	41.6	40.4	41.6	17.4			
	2.53	3.54	10.73	19.60	3.03	5.74	33	9.9	43.5	22.1	60.0	62.0	104.5	45.2		
	1.67	1.33	4.23	8.83	2.10	4.27	39	6.9	71.6	53.3	97.4	103.4	192.0	22.1		
200	2.74	15.37	26.94	4.35	5.77	31	21.3	37.1	18.8	42.5	29.8	79.3	22.5			
	2.46	2.98	9.40	17.73	2.53	5.42	41	13.9	55.6	35.7	65.5	52.5	164.3	33.8		
	1.54	1.12	3.04	6.28	1.94	3.24	55	6.2	74.5	65.3	125.6	92.3	294.3	55.6		
300	4.54	2.22	12.25	22.73	9.25	11.03	31	11.4	12.8	21.6	53.0	62.0	46.2	8.4		
	2.36	1.90	7.72	12.06	3.93	5.14	40	7.1	26.9	41.1	109.9	82.3	61.7	24.8		
	1.63	0.64	0.55	2.10	2.56	3.73	55	4.5	57.2	167.4	167.7	115.2	167.1	45.4		
400	2.4	3.27	14.17	27.50	2.46	13.21	23	13.1	13.3	28.4	62.3	48.0	105.5	45.7		
	1.67	1.64	8.57	13.95	4.92	6.85	34	12.2	49.1	73.5	133.4	77.6	161.2	87.5		
	1.35	0.71	2.70	5.79	2.73	4.50	46	8.0	65.4	125.1	223.6	111.1	259.4	167.1		
500	2.49	3.37	20.65	34.51	10.28	15.84	21	15.3	6.2	39.9	82.0	45.6	65.4	18.1		
	1.77	1.76	10.14	15.91	5.53	9.46	57	10.8	18.3	92.5	140.4	94.7	119.1	37.2		
	1.42	0.79	4.37	5.86	3.64	5.94	42	5.7	45.3	149.6	204.7	157.3	206.8	92.9		
600	3.92	2.96	12.77	14.45	5.89	2.22	27	7.0	9.7	33.5	53.8	45.9	46.4	16.1		
	2.70	1.81	7.96	10.04	4.35	5.23	51	5.2	15.9	51.5	96.3	84.7	71.0	29.8		
	1.79	1.21	4.42	4.71	3.25	3.16	44	4.1	27.0	101.1	165.7	128.4	123.4	48.5		
700	4.95	4.81	14.82	14.73	4.23	6.37	32	10.2	21.1	17.7	25.4	42.2	45.9	7.1		
	3.65	2.75	8.11	13.41	3.03	5.30	41	7.5	30.5	24.1	45.3	59.7	74.6	17.7		
	2.59	1.22	4.43	6.41	2.05	3.27	54	5.7	45.3	39.8	85.6	77.5	118.5	39.6		
800	3.69	4.33	19.44	24.11	2.22	6.23	26	8.6	45.3	13.2	34.9	44.5	44.0	29.6		
	4.92	3.60	7.25	18.21	1.65	4.66	32	7.4	84.8	20.8	49.4	63.6	86.2	73.5		
	2.25	2.27	4.19	14.50	1.49	3.75	38	6.2	103.2	27.6	72.7	61.4	111.2	111.8		
900	4.49	4.76	13.24	14.69	4.41	10.25	27	12.1	34.6	15.3	40.0	45.9	60.1	56.9		
	2.49	2.67	8.25	21.92	2.93	6.78	34	9.4	54.6	32.2	70.6	85.0	94.2	63.3		
	1.65	1.57	3.54	6.15	2.09	4.89	40	6.9	83.4	62.0	121.1	103.2	159.4	124.8		
Counters 60	4.52	4.54	11.75	27.12	4.46	8.72	27	12.1	26.6	17.0	30.8	41.3	52.4	4.7		
	2.87	2.73	8.52	15.75	3.00	4.99	35	7.6	38.9	33.7	68.4	68.7	83.8	30.7		
	1.47	0.97	3.53	6.70	2.14	3.60	49	5.3	59.0	68.6	129.9	112.7	126.1	49.2		
1000	2.92	10.22	11.48	51.51	2.41	6.72	37	10.9	68.4	14.0	24.4	49.0	85.3	32.1		
	2.23	6.92	9.72	35.21	1.38	5.51	28	9.2	87.6	22.3	44.5	69.0	127.2	61.8		
	1.04	3.67	7.02	21.14	0.59	4.28	54	7.1	95.8	36.4	74.2	82.9	180.2	119.3		
1200	2.21	4.82	17.50	39.52	6.43	8.65	30	13.1	38.3	44.4	38.6	56.3	101.4	12.2		
	1.75	2.02	12.55	17.82	4.03	6.64	48	9.8	61.1	81.3	65.9	70.4	156.2	32.3		
	1.04	1.14	4.31	7.23	2.35	4.98	57	7.1	60.1	115.3	160.2	124.1	276.0	81.9		
1400	4.48	3.94	12.45	25.63	4.15	11.34	30	10.9	12.2	40.0	40.0	40.0	40.0	21.4		
	2.45	2.84	8.83	16.51	3.00	5.97	39	10.9	32.8	74.6	74.6	74.6	74.6	75.3		
	1.53	1.42	4.26	10.44	2.12	5.99	50	10.9	84.9	59.4	108.1	108.1	108.1	153.4		
1600	5.05	8.02	22.89	45.65	3.84	8.73	36	8.3	16.1	15.5	78.8	49.1	46.8	20.0		
	2.45	3.50	12.38	14.39	2.65	4.21	48	6.4	37.0	43.2	101.0	70.3	88.9	48.5		
	1.74	0.43	1.87	1.94	1.96	2.08	78	3.6	78.5	81.4	236.8	131.5	131.7	168.0		
1800	2.53	2.73	15.31	21.25	8.93	12.70	22	10.0	3.1	52.1	77.3	78.6	60.4	3.5		
	1.88	1.32	8.96	11.70	6.37	7.73	37	5.1	10.7	103.1	128.1	122.1	97.4	24.8		
	1.42	0.81	2.45	3.51	4.34	5.40	62	4.4	24.6	172.4	246.0	188.7	132.0	45.5		
2000	3.51	3.63	12.70	15.75	7.93	8.05	29	11.2	12.4	30.4	52.9	58.9	54.3	12.1		
	2.08	1.71	7.40	8.74	4.74	6.05	47	6.1	19.7	69.2	78.4	82.8	94.0	21.6		
	1.48	0.45	3.62	4.49	2.24	2.60	62	3.8	34.1	159.6	159.3	151.4	174.3	35.8		
2200	3.11	7.50	14.21	14.76	3.74	15.29	12	28.8	57.7	15.7	33.6	33.5	63.4	32.2		
	2.12	4.15	10.61	45.93	2.60	8.98	19	17.4	72.5	31.6	55.8	59.2	171.2	84.2		
	1.34	2.45	7.63	12.96	1.92	5.69	30	10.5	93.2	55.8	104.9	101.5	34.4	181.1		
2400	4.60	5.94	12.15	22.71	3.84	7.69	36	13.0	18.9	21.9	31.6	40.4	55.8	7.9		
	2.68	3.85	7.80	11.43	2.25	3.99	54	6.1	36.8	37.2	59.1	59.5	109.7	23.4		
	1.90	0.92	3.80	6.19	1.72	2.19	102	3.9	47.1	64.4	89.1	66.1	172.7	67.6		
2600	4.03	5.44	16.93	29.14	5.55	10.22	29	12.9	23.3	22.3	78.8	43.6	63.3	17.1		
	2.15	2.61	10.20	13.81	3.85	5.78	47	7.8	38.6	51.7	111.7	71.6	114.3	40.3		
	1.46	1.35	4.73	6.01	2.33	3.43	43	4.9	53.4	95.4	174.3	123.4	191.5	92.5		
2800	2.78	3.84	15.54	19.90	5.82	7.81	24	7.6	11.3	35.3	57.8	63.7	63.5	16.0		
	2.23	2.67	7.40	17.47	4.35	5.07	37	5.1	20.6	66.7	92.9	102.2	93.2	40.2		
	1.60	0.41	1.50	3.05	2.54	3.57	51	3.5	56.8	121.1	204.6	155.3	126.6	69.8		
3000	4.03	5.56	16.90	24.43	4.61	5.69	38	8.2	23.6	27.0	43.8	52.5	60.8	18.0		
	2.34	3.65	11.03	14.23	3.76	4.24	57	5.3	33.6	50.9	95.1	60.8	80.3	55.3		
	1.81	1.95	4.36	6.23	2.18	3.41	53	3.9	53.3	88.2	141.6	112.3	121.5	78.7		
3200	2.73	1.68	10.78	13.09	2.47	8.51	27	8.8	2.0	55.6	68.0	78.4	69.9	13.3		
	2.18	1.04	3.70	5.91	4.49	4.49	65	5.6	6.3	76.3	91.4	89.8	89.9	21.5		
	1.65	0.54	2.39	2.51	2.26	3.42	77	3.5	16.4	117.6	152.1	118.1	116.7	46.6		
3400	2.45	2.69	12.59	12.92	11.20	17.45	22	14.3	5.7	53.6	82.7	71.7	73.6	13.0		
	1.64	0.70	5.53	5.19	7.55	10.56	35	8.7	10.4	93.4	162.1	112.7	129.1	23.1		
	1.32	0.19	1.52	2.02	4.53	6.24	49	7.1	24.1	146.3	227.2	160.6	165.3	64.6		

Source: Bureau of Economic Analysis, Department of Commerce, Washington, D.C.



## Appendix R-3

REPORT MODEL A STATISTICAL  
STATEMENT STUDIES

YEAR ENDED OR ON ABOUT DECEMBER 31 1963

## MANUFACTURING

PAPERBOARDS  
TAINERS & BOXES

NET SIZE	UNDER \$250M	\$250M & LESS THAN \$1MM	\$1MM & LESS THAN \$10MM	ALL SIZES
NUMBER OF STATEMENTS	35	48	35	118
ASSETS				
CASH	10.26	7.52	6.15	6.53
RECEIVABLES NET	26.94	23.30	19.23	20.19
INVENTORY NET	23.28	25.05	25.08	25.01
MARKETABLE SECURITIES	.84	.31	1.21	1.06
OTHER	7.93	.64	.82	.88
TOTAL CURRENT	64.24	56.90	52.50	53.66
FIXED ASSETS NET	29.03	35.78	41.59	40.18
ALL OTHER	6.73	7.32	5.91	6.16
TOTAL NON CURRENT	35.76	43.10	47.50	46.34
TOTAL	100.00	100.00	100.00	100.00
LIABILITIES				
DEBT TO BANKS	8.80	6.62	5.44	5.76
DEBT TO TRADE	17.50	14.04	12.93	13.28
INCOME TAXES	2.98	2.70	3.54	3.38
OTHER	8.11	8.88	6.09	6.61
TOTAL CURRENT	37.40	32.24	28.00	29.04
DEBT UNSUBORDINATED	9.35	11.25	12.62	12.28
DEBT SUBORDINATED	1.20	2.03	1.01	1.18
TOTAL DEBT	47.94	45.51	41.63	42.49
FIXED ASSETS NET WORTH	52.06	54.49	58.37	57.51
TOTAL	100.00	100.00	100.00	100.00
INCOME DATA				
NET SALES	100.00	100.00	100.00	100.00
COST OF SALES	77.05	78.21	79.31	78.08
GROSS PROFIT	22.95	21.79	20.69	21.02
ALL OTHER EXPENSE NET	19.33	19.58	17.21	17.77
PROFIT BEFORE TAXES	3.62	2.21	3.48	3.25
INCOME TAXES	1.50	1.03	1.75	1.60
NET PROFIT OR LOSS	2.12	1.18	1.73	1.65
RATIOS				
CURRENT	1.72	1.77	1.87	1.85
WORTH/FIXED	1.79	1.52	1.40	1.43
WORTH/DEBT	1.09	1.20	1.40	1.35
SALES/RECEIVABLES	34 10.49	37 9.62	38 9.48	37 9.55
COST SALES/INVENTORY	38 9.35	51 7.02	62 5.76	59 6.09
SALES/INVENTORY	12.13	8.98	7.27	7.71
SALES/FIXED	9.73	6.29	4.38	4.80
SALES/WORTH	5.43	4.13	3.12	3.35
PROFITS/WORTH	11.50	4.88	5.40	5.54
SALES/TOTAL ASSETS	2.83	2.25	1.82	1.93
PROFIT/TOTAL ASSETS	5.98	2.66	3.15	3.18
THOUSANDS OF DOLLARS				
NET SALES	\$ 15532	\$ 50811	\$ 208245	\$ 274588
TOTAL ASSETS	\$ 5498	\$ 22591	\$ 114273	\$ 142362

TWO RATIOS SHOW TURNOVER AND DAYS SALES

Appendix R-4

UNITED STATES GOVERNMENT  
STATISTICAL BUREAU  
INCOME SUPPLEMENT

YEAR ENDED ON OR ABOUT DECEMBER 1963

MANUFACTURING

PULP & PAPER  
AND PAPERBOARD

UNDER  
\$250M

\$250M &  
LESS THAN  
\$1MM

\$1MM &  
LESS THAN  
\$10MM

NUMBER OF STATEMENTS

INCOME DATA  
NET SALES  
COST OF SALES  
GROSS PROFIT  
SELLING & DELIVERY EXP  
OFFICERS SALARIES  
OTHER GEN ADMIN EXP  
ALL OTHER EXPENSE NET  
PROFIT BEFORE TAXES  
INCOME TAXES  
NET PROFIT OR LOSS

%

%

%

PAPERBOARD  
CONTAINERS & BOXES

NUMBER OF STATEMENTS

12

14

15

41

INCOME DATA  
NET SALES  
COST OF SALES  
GROSS PROFIT  
SELLING & DELIVERY EXP  
OFFICERS SALARIES  
OTHER GEN ADMIN EXP  
ALL OTHER EXPENSE NET  
PROFIT BEFORE TAXES  
INCOME TAXES  
NET PROFIT OR LOSS

%  
100.00  
75.35  
24.64  
8.53  
6.34  
6.16  
.07  
3.50  
1.76  
1.71

%  
100.00  
80.31  
19.68  
6.92  
3.01  
7.76  
.48  
.69  
.55  
.14

%  
100.00  
75.31  
24.68  
21.68  
9.38  
2.17  
6.29  
.80  
3.02  
1.59  
1.43

100.00  
75.31  
24.68  
21.68  
9.38  
2.17  
6.29  
.80  
3.02  
1.59  
1.43

PAPER SPECIALTIES

NUMBER OF STATEMENTS

19

21

INCOME DATA  
NET SALES  
COST OF SALES  
GROSS PROFIT  
SELLING & DELIVERY EXP  
OFFICERS SALARIES  
OTHER GEN ADMIN EXP  
ALL OTHER EXPENSE NET  
PROFIT BEFORE TAXES  
INCOME TAXES  
NET PROFIT OR LOSS

%  
100.00  
80.21  
19.76  
9.46  
2.74  
5.02  
.50  
2.02  
.77  
1.25

%  
100.00  
62.64  
37.35  
17.14  
6.53  
1.97  
4.21  
.26  
3.76  
1.84  
1.50

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Appendix R-5

*Fig. 205 -  
Financial Performance Ratios of Business Firms and  
Profit Evaluation (Ratios - 1955)*  
PAPERBOARD CONTAINERS AND BOXES (SIC 260)

Sales Volume Record of Total Industry

YEAR	DOLLAR SALES	INDEX
1948	1,397,261,000	100.0
1953	2,092,033,000	149.7
1958	2,212,825,000	158.4
1963	2,303,734,000	164.9
1964	2,348,295,000	168.0

Ratios or Percentages as indicated below (1954)	By Size of Assets (in thousands of \$)					FOR THE TOTAL INDUSTRY
	A Under 500	B 500 to 2,499	C 2,500 to 9,999	D 10,000 to 49,999	E 50,000 and over	
Selected Operating Factors (in per cent of Net Sales)						
1. Cost of Sales	74.0	74.0	72.6	72.2	61.8	71.9
2. Executive Salaries	5.2	3.0	1.4	.8	.6	2.3
3. Rent	2.0	1.5	.7	1.3	1.1	1.4
4. Repairs	.5	.7	1.5	2.3	4.0	1.7
5. Bad Debts	.3	.2	.2	.1	.1	.2
6. Interest	.5	.5	.5	.7	.8	.6
7. Taxes (Excl Fed Inc Tax)	2.3	2.1	2.0	2.1	2.2	2.1
8. Contributions	(a)	.1	.1	.1	(a)	.1
9. Depr/Depl/Amortiz*	2.4	2.3	3.0	3.7	5.2	3.2
10. Advertising	.2	.4	.3	.2	.3	.3
11. Pensions & Benefits	.4	.9	.8	.9	1.6	.9
12. Net Profit after Inc Tax	2.1	2.5	3.0	3.4	5.0	3.1
Selected Financial Ratios (number of times ratio is to 1)						
13. Current Ratio	1.7	1.9	2.2	2.2	3.3	2.1
14. Quick Ratio	1.0	1.2	1.3	1.3	2.0	1.3
15. Net Sls to Net Wkg Cptl	10.0	6.9	5.8	5.8	4.5	6.4
16. Net Sls to Net Worth	4.9	3.5	3.3	2.3	1.7	2.7
17. Inventory Turnover	(b)	(b)	(b)	(b)	(b)	9.1
18. Tot Liab to Net Worth	1.0	.8	.5	.7	.7	.7
Selected Financial Factors (in per cent)						
19. Curr Liab to Net Worth	72.7	53.3	34.5	32.6	16.7	37.3
20. Inv to Curr Assets	38.4	37.1	39.6	41.9	38.3	39.2
21. Net Inc to Net Worth	10.5	8.6	7.0	7.8	8.8	8.4
22. Ret Earnings to Net Inc	84.2	86.7	89.2	86.6	28.0	63.1
*Depreciation largest factor						

\*Depreciation largest factor

*Source - U.S. Treasury Dept. 1965 Survey of Current Business  
for Corp. Fin. Ind. Bureau*

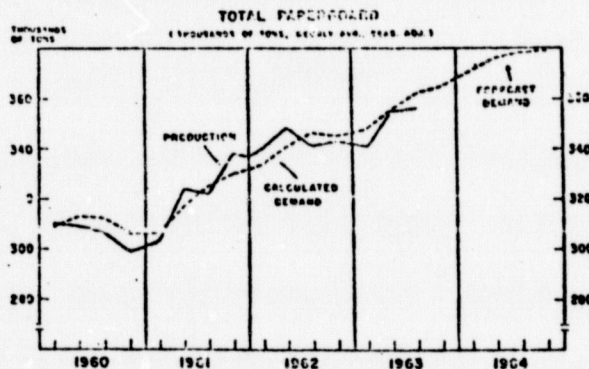
### Demand to Continue Upward Production Hitting New Records Capacity Coming Into Balance

TOTAL PAPERBOARD production for 1963 is expected to top all previous records at some 18.4 million tons, over 3% higher than last year, according to reports heard at the annual meeting of the National Paperboard Association held at the New York Hilton hotel, November 11-13. Demand for paperboard (see chart) is expected to continue its upward trend through the coming year and is forecast at about 6% higher than the current year—to average about 316 M tons per week in 1964, compared to 358 for 1963. Order backlogs are high, inventories are on the low side and the ratio of unused capacity to production continues its move toward a better balance (see charts). Forecasts for the general economy are optimistic with the three major factors pushing upward—the spending outlays expected by (1) government, (2) business and (3) consumers.

Presiding at the annual meeting was Association Vice President Howard Morgan (Weyerhaeuser) who held the

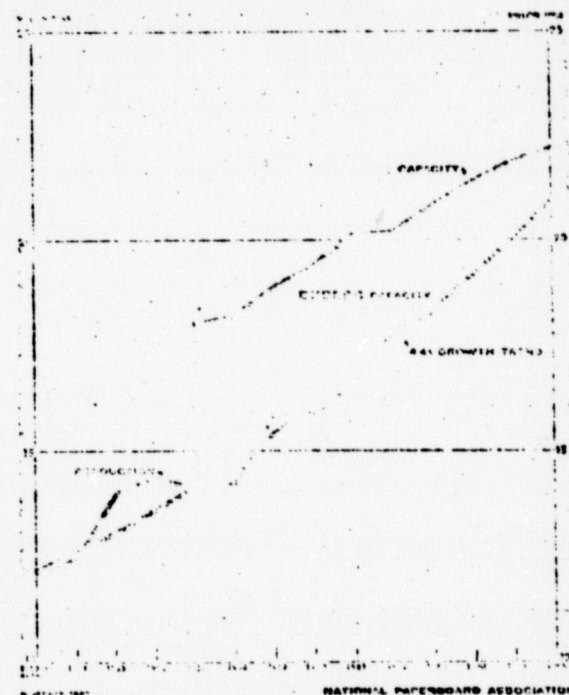
Continued on p. 105

#### Paperboard Demand Continuing Upward



N.P.A.'s New Vice President Benton R. Concell (Pettibone Forests); Retiring Vice President Howard W. Morgan (Weyerhaeuser), who presided at the Annual Meeting; and Russell C. Elton (Marathon American Can) newly elected President of the Association. Leo Schaeffgen (Continental Corp.) selected Vice President of N.P.A. was absent—on a trip studying business conditions abroad.

#### Paperboard Capacity—Excess Declining



#### Paperboard Orders, Activity and Production

1962 - 1963 Expressed as Average Week

ITEM	1962					1963			
	1st Quarter	2nd Quarter	3rd Quarter	October	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	October
<b>ORDERS</b>									
Received (M Tons)	341	349	337	353	330	354	360	360	385
Unfilled (M Tons)	474	478	503	449	455	461	496	587	643
Days To Run	7.8	7.9	8.2	8.0	7.4	7.5	8.0	9.5	10.4
<b>PRODUCTION (M Tons)</b>									
Total Paperboard	313	353	331	360	337	314	352	347	343
Combed for Domestic Use									
Total	178	142	173	192	174	179	186	181	205
Liners	119	123	115	129	119	120	124	120	131
Converting Materials	51	51	53	59	54	54	56	56	62
Combed for Export Use	5	5	5	5	5	5	5	5	5
Total	163	167	94	185	97	164	167	161	164
Folding	67	63	64	62	57	62	64	60	64
Special Fold Board	31	31	30	32	30	31	32	31	32
S-100	16	16	10	11	10	10	11	10	12
<b>All Other Paperboard</b>									
Total	62	61	63	63	62	65	69	65	70
All Other Combed Board Type	30	31	33	31	31	32	36	35	34
All Other Board Type	32	30	30	32	31	33	33	30	36
Activity—Percent of Operating Time	55	55	59	82	89	55	85	81	89



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JEFF SIMON, AS CUSTODIAN FOR :  
GAIL NINA SIMON, UNDER THE  
NEW YORK UNIFORM GIFTS :  
TO MINORS ACT :

V. . . .

CIVIL NO. 10,425

THE NEW HAVEN BOARD AND  
CARTON COMPANY, INC., ET AL :

MEMORANDUM OF DECISION

While some litigation under Rule 10b-5<sup>1/</sup> is "the unhappy aftermath of a corporate marriage gone sour," Republic Technology Fund, Inc. v. The Lionel Corporation, \_\_\_ F.2d \_\_\_ (2d Cir. July 17, 1973), this suit arises because the marriage was so successful that a member of the groom's family thinks there should have been a larger dowry. This is a stockholder's derivative action brought by the custodian of a minor who owns stock of The New Haven Board and Carton Company (hereafter "New Haven" or "the company"). Defendants are the company and several of the officers and directors. The amended complaint pleads two causes of action: count I, based on diversity jurisdiction, alleges that the three director-defendants who are residents of Connecticut breached their fiduciary duties imposed by the law of Connecticut; count II, for which jurisdiction is supplied by 15 U.S.C. § 78aa, alleges that all defendants violated Rule 10b-5.

Appendix S-2

The allegations arise in connection with a merger of several Florida corporations (hereafter "the Miami companies") into New Haven. Defendants Leon Simkins, Morton Simkins, and other members of their families owned all or most of the shares of the Miami companies. Prior to the merger the Simkins had acquired 32.6% of the outstanding shares of New Haven and had acquired and exercised the right to name a majority of New Haven's directors. Leon Simkins was serving as president of New Haven. The Simkins were in effective control of the company. The merger was accomplished by New Haven's issuance of 1,377,774 shares of its common stock to the shareholders of the Miami companies in exchange for all of the outstanding shares of common and preferred stock of the Miami companies.

The agreement to merge was approved by the directors of New Haven on January 16, 1964, subject to stockholder approval. Proxies were solicited from New Haven shareholders by a proxy statement dated February 12, 1964, which was mailed on February 14, 1964, together with New Haven's annual report for the fiscal year ending September 30, 1963. The shareholders' meeting that approved the merger was held February 28, 1964. The original complaint was filed in April, 1964. A motion to dismiss was denied by Judge Zampano in 1966. Simon v. New Haven Board & Carton Co., Inc., 250 F.Supp. 297 (D. Conn. 1966). For reasons not entirely clear, the case languished for several years. In 1972 it was assigned to me



for trial, and a bench trial occurred on seven days in March, 1972. Because the parties wished to have a complete transcript before submitting briefs, it was not until February 28, 1973, that final briefs and supplementary correspondence from the parties were received. This Court is responsible for the delay since then, having accorded the case a priority roughly reflecting the urgency with which the parties needed the litigation for submission.

It is unnecessary to recount all the details of the bleak financial picture of New Haven prior to the merger. For five successive years beginning with 1959, the company had experienced heavy losses on sales that, since 1960, were only slightly declining.<sup>2/</sup> Since 1959, retained earnings had dropped steadily from just over \$2 million to just over \$1/4 million in 1963. The market price of the company's stock, traded over-the-counter, reflected the company's deteriorating financial fortunes. The bid price ranged from 6-1/2 to 12-1/2 in 1959, from 2-1/8 to 6-1/8 in 1962, and from 2-7/8 to 5 in 1963. With the exception of certain block purchases to be discussed, the market for New Haven shares was thin, with only nominal trading.

Confident that their managerial capability, demonstrated in their successful operation of the Miami companies, could make New Haven profitable, the Simkins acquired control of the company in 1963, after it had experienced a succession of management changes, and in 1964 decided upon the merger.

The merger terms were set by dividing the then current bid price for New Haven shares, \$4.50, into the value of the Miami shares, which had been determined by an independent appraisal to be \$6,200,000. This computation produced 1,377,774 as the number of New Haven shares to be issued in exchange for the Miami shares.

Plaintiff's 10b-5 claims are based on alleged misrepresentations and omissions in the proxy statement and the accompanying 1963 annual report, that were mailed to shareholders of New Haven on February 14, 1964.<sup>3/</sup> A principal but not the only challenged item is the omission of the results of an unaudited internal financial report for the company's first quarter, ending December 31, 1963, of its 1964 fiscal year. This report, prior to correction, showed first-quarter profits of \$148,590. Plaintiff's essential contention, in support of which its expert, Dr. Douglas Bellemore, testified at length, is that disclosure of this first-quarter report would have provided a basis on which shareholders could have concluded that the value of New Haven shares at the time of the merger was not \$4.50 per share, but \$8.62-1/2 per share. Using this higher price per share, plaintiff claims that New Haven was damaged in two ways: (a) by "paying" too much for the Miami shares; the overpayment is claimed to be the alleged price per share of \$8.62-1/2 times the number of shares issued, 1,377,774, or \$11,883,301, less the value of the shares received in exchange, \$6,200,000, a



difference of \$5,683,301, and (b) by losing the opportunity to sell, at the highest price since the merger, the "extra" shares issued to the Simkins; since a price per share of \$8.62-1/2 divided into the \$6,200,000 value of the Miami companies would have required issuance of only 718,841 shares, plaintiff subtracts this figure from the 1,377,774 shares actually issued to arrive at 658,933 "extra" New Haven shares issued to the Simkins, which, at a post-merger high price of \$21.50 per share, might have been sold to the public at a total price of \$8,483,762.<sup>4/</sup> Plaintiff seeks a money judgment of \$14,167,063 in damages plus an accounting of the profits made by the individual defendants.

At trial plaintiff made clear that it was abandoning earlier claims for rescission and was limiting its requested relief solely to a claim for damages and an accounting. From the above computations, it is apparent that the lynch pin of the claim for damages is the alleged price of New Haven shares of \$8.62-1/2, or any price above the merger price of \$4.50. Moreover, analysis of plaintiff's causes of action will demonstrate that plaintiff is entitled to no judgment unless the company has been damaged by issuance of its shares at the \$4.50 price.

Both the 10b-5 claim and the claim arising under state law are brought as derivative actions on behalf of the corporation. Any claim for relief to shareholders of the company on a class action theory was specifically disclaimed

by plaintiff at trial and, in any event, would fail in the absence of any evidence that plaintiff could establish the requisite jurisdictional amount in controversy. There is no doubt that a derivative action can be brought for violation of Rule 10b-5, Ruckle v. Roto American Corporation, 339 F.2d 24 (2d Cir. 1964), and that a corporation's issuance of its shares is a "sale" within the meaning of the Rule. Ibid.; see also Hooper v. Mountain States Securities Corp., 282 F.2d 195 (5th Cir. 1960). On the motion to dismiss, defendants alleged that the complaint failed to allege facts constituting damage to the issuing corporation, on the theory that even if the shares had been undervalued with consequent issuance of excess shares, the only damage was dilution of the value of the interest held by each shareholder. Judge Zampano rejected this argument, relying on Ruckle and Hooper for the proposition that a corporation, shown to have issued its shares for less than their fair value, has been damaged. That ruling on the motion to dismiss is the law of this case. Under the ruling, issuance of shares for less than fair value could produce damages in two ways: (a) loss to the company measured by the difference between the value of the shares issued and the value of the assets received in exchange, and (b) injury to the corporate integrity of the company measured by the damage attributable to any lessened ability to attract public capital investment or to obtain institutional financing as a result of the excess issuance of its shares.



From the evidence in this case, it is apparent that the issuance of 1,377,774 shares valued at \$4.50 per share caused no damage whatever to the corporate integrity of New Haven. There was no evidence to show any diminution in the company's capacity, as a result of the merger ratio, to attract capital or loans. On the contrary, the merger vastly improved the company's financial structure and operating capability. Thus, the only theory of damages available to the plaintiff, on the 10b-5 count, is that the merger resulted in receipt of inadequate consideration or, to put it another way, issuance of an excessive number of shares. Since plaintiff disclaimed any attack upon the valuation, by independent appraisal, of the value of the Miami companies received in exchange for the New Haven's shares, and there was no evidence that the Miami companies were overvalued, the claim of inadequate consideration rests entirely on the contention that the issued New Haven shares were worth in excess of \$4.50 per share.

Plaintiff's state law claim also turns ultimately on the appropriateness of the \$4.50 per share valuation. While not developing the state law claim with much precision, plaintiff apparently alleges both a breach of common law fiduciary duties by the three Connecticut directors, cf. Richland v. Crandall, 262 F.Supp. 538 (S.D. N.Y. 1967), as well as a violation of the provisions of the State's corporation law, Conn. Gen. Stat. § 33-323. This statute renders voidable a contract between a corporation and another company

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in which a director of the corporation has an interest unless the interest is fully disclosed and the "transaction is fair as to the corporation." If the conditions are not met, the corporation may rescind or receive damages. § 33-323(c). Since plaintiff has abandoned any claim for rescission, his only state law claim is for damages. And, as with his 10b-5 claim, the only respect in which the merger is alleged to have damaged the corporation is the issuance of its shares for less than adequate consideration.

The state law claim may, however, affect the burden of proof. The proponents of a transaction covered by § 33-323 have the burden of proving that the transaction is fair and for adequate consideration. Osborne v. Locke Steel Chain Co., 153 Conn. 527, 534 (1966). Since the price of the New Haven shares is the only factor, from the evidence in this case, that could entitle the corporation to damages by reason of a transaction that was not "fair," the defendants may have the burden of proving the fairness of this price.<sup>5/</sup> In any event, all of plaintiff's claims for damages turn on the appropriateness of the \$4.50 price. Since the evidence establishes that the fair market value of New Haven's shares at the time of the merger was not more than \$4.50 per share, even if defendants have the burden of proof on this issue of fact, it will be necessary to consider in detail only the evidence on this issue, without reaching the issues of whether or not a material misrepresentation or omission occurred.

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Plaintiff's principal evidence to establish a value of New Haven shares in excess of \$4.50 per share was a price-earnings analysis presented by Dr. Bellemore, based on the unaudited, internal financial report for the first quarter of fiscal 1964, covering the three months ending December 31, 1963. The Bellemore analysis, in the circumstances of this case, does not establish a value in excess of \$4.50 per share for the shares issued to the Simkins for several reasons. Some of the reasons to be discussed are sufficient to reject his analysis in and of themselves. In combination, their effect plainly undermines his conclusion.

1. The premise of the Bellemore analysis is the application of a price-earnings ratio to a projection of a full year's earnings estimated from the earnings of a single quarter. Relying on Norte & Co. v. Huffines, 288 F.Supp. 855 (S.D. N.Y. 1968), defendants contend that, as a matter of law, valuation based on a price-earnings ratio is unreliable when the earnings in the equation have been preceded by a "significant recent series of substantial losses." Id. at 859. New Haven's alleged first quarter earnings of \$148,590 had been preceded by five years of losses totaling more than \$2-1/2 million. Even if use of a price-earnings ratio is not barred as a matter of law, the inappropriateness of its use as a factual matter in this case is at least as great as in Norte & Co. This conclusion is underscored by the factors that remain to be considered.

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2. Even if a price-earnings ratio can be applied to earnings preceded by substantial losses, such analysis lacks solidity when the earnings are a projection of a full year from a single quarter rather than actual results of a twelve-month period. Dr. Bellemore recognized the added uncertainty of a projection, since he annualized the first-quarter earnings by a factor of three instead of four. That caution does make the total analysis a bit more conservative, but it does not eliminate the basic guess as to whether the earnings would continue at all. Of course, all price-earnings analysis is premised on a guess as to future earnings, but a guess that future years will continue a trend set in a completed year is far more reliable than a guess that a full year will reflect the trend of a single quarter.

The hazards of projecting a full year of income from a single quarter are especially evident in this case, since a full year's projection from the first four months is substantially less than a projection from the first three months. Earnings for the first three months, per the unaudited internal reports, were \$148,590, but for the first four months, they were only \$88,870. Had Dr. Bellemore annualized from the first four months, even if those months were fully annualized by a factor of three, the resulting price per share would have been less than the \$4.50 paid by the Simkins. This is not to suggest that the results for the first four months are a more reliable basis for projection than for the

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first three months. But it does indicate the instability of analysis based on earnings projected from a fraction of a year.

Another hazard of the projection is the inevitable effect of hindsight. Dr. Bellemore conceded that the key judgmental question in his analysis was whether the first-quarter profit in fiscal '64 represented a "turn-around" or only an exception to a trend of losses. The question assumes special importance in this case since the first "quarter" of profit was in fact a first month of profit followed by two months of losses. Dr. Bellemore was persuaded that a turn-around had occurred because of his confidence in the new management and the fact that they had achieved a quarter of profit after being in control for only a brief period. One cannot help but wonder whether the same conclusion would have been expressed as of the end of the first quarter if the ensuing quarters had showed continued losses, instead of the profits that in fact occurred after the merger. Would an experienced financial analyst testify to a price valuation that subsequent events demonstrated was too high? How much probative force can be given a projection that is confidently put forth in the knowledge that subsequent events in fact bore it out?<sup>6/</sup>

The risk of hindsight affecting the legitimacy of the projection is evidenced by two aspects of the testimony in this case. First, though Dr. Bellemore insisted his analysis was made on the basis of "a continuing company without

the merger," (Tr. 359), he permitted the prospect of a merger to strengthen his view concerning the company's capacity to generate earnings. For example, when cross-examined as to the company's capacity to replace old equipment when its cash reserves were rapidly declining, he replied: "I had faith in this management; they knew what they were doing, and if they needed equipment they would get it. They say how financially strong they are going to make it as a result of the merger, so they didn't worry about it." (Tr. 343, emphasis original). Secondly, in coming to the critical conclusion that the first-quarter earnings represented a "turn-around" for the company, Dr. Bellemore acknowledged that he "went carefully through" (Tr. 114) the deposition of William Medinger, New Haven's comptroller, a deposition given long after the merger. Apparently, it was Dr. Bellemore's position that the deposition alerted him to events that had occurred prior to the merger. However, when the question arose as to what his opinion would be in the absence of the later deposition, plaintiff's counsel offered to present later in the trial additional testimony from Dr. Bellemore that would isolate those portions of the Medinger deposition that referred to events before the merger. (Tr. 120, 130).<sup>7/</sup> No satisfactory clarification of this point was ever supplied.

147 3. Even if a price-earnings analysis can be based on a year's earnings projected from earnings for one quarter, there was no adequate basis here for concluding that the first



quarter was sufficiently representative to support the projection. In the preceding year, the first-quarter result was a loss of \$376,519 compared to a full-year result of a loss of \$559,889. More significantly, in fiscal '62, the first-quarter result was a profit of \$55,467 compared to a full-year result of a loss of \$81,032. Thus, regardless of Dr. Bellemore's confidence in the new management, first-quarter profit figures were not shown to be sufficiently indicative of a full year's operation. They might support a prediction that the year would show a profit, but not a prediction of the amount of that profit, which became a critical factor in Dr. Bellemore's determination of price per share.

The substantiality of the first-quarter earnings as a base for a full year's projection was also undermined by the wild fluctuation in the monthly figures for that quarter. The first month showed a profit of \$165,758, while the next two months showed losses of \$70,858 and \$5,659.

Dr. Bellemore contended that the representativeness of the first-quarter figures was evidenced by the sales figures. (Tr. 219). He claimed the company's November and December sales dropped only "in line with the industry." (Tr. 271). Yet the evidence shows that in the first quarter of fiscal '64, monthly sales figures were \$2,428,973, \$1,707,910, and \$1,678,628. The November sales were 30% less than the October sales, a far more precipitous decline than

the 5% that was recorded by the industry as a whole. (Pl. Ex. 66). Interestingly, the company's monthly sales figures for the first three months of the preceding fiscal year showed a modest decline of only 7% from October to November, followed by a slight increase in December.

4. Even if first-quarter earnings could be used as the basis for a price-earnings analysis, the evidence revealed that the unaudited figure of \$148,590 was incorrect, and that the incorrectness was apparent from information available prior to the merger.<sup>8/</sup> The company's figures for the four months ending January, 1964, showed a net profit of \$88,870. The January figures alone showed a net loss of \$8,451. When this January loss is subtracted from the four months' profit figure, the result is a first-quarter profit figure of \$97,321, instead of \$148,590. Irving Sklar, whose accounting firm supervised the preparation of New Haven's financial statements, testified that errors were corrected only in the year-to-date figures, without revising the prior monthly reports. (Tr. 704-08).

Sklar testified that in December an error was noted in the inventory figures which showed that income for the first quarter had been overstated by \$55,832. Sklar used a corrected first-quarter earnings figure, broke out non-recurring items, and calculated a first-quarter earnings figure of \$69,006. (Deft. Exs. E, F, and G). Applying Dr. Bellemore's analysis to this first-quarter figure, Sklar computed a price per share of \$3.37-1/2.

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Another infirmity in the \$148,590 figure is the fact that it reflects no salary for either Leon or Morton Simkins. Dr. Bellemore testified he thought it was "a reasonable possibility" that they would take no salary during all of fiscal '64. (Tr. 294). However reasonable that possibility was, some salary should have been estimated in projecting a full year's profit before the profit figure could be used as a firm base for a price-earnings analysis to determine price per share.

5. While not as significant as the factors already mentioned, there was some weakness in Dr. Bellemore's selection of 7.5 as the proper multiple to be used for the price-earnings ratio. He calculated 15 as the average ratio for a group of companies listed in Standard & Poor's as being in the same product category as New Haven. These companies were considerably larger than New Haven and, their price-earnings ratio was computed on pre-tax earnings, whereas New Haven had a tax loss credit available to eliminate taxes in 1964. Dr. Bellemore discounted this ratio of 15 by 50% to allow for various uncertainties.

He also selected three medium-sized companies in the industry and found that their average price-earnings ratio was 13.6. Since he testified that smaller companies tend to have a smaller price-earnings ratio (Tr. 365), and since the sales of the three medium-sized companies (\$44, \$130, and \$66 million) were still considerably larger than

New Haven's (\$21 million for fiscal '63)(Tr. 99), one might have thought that Dr. Bellemore would have selected a ratio less than 13.6 before applying his 50% discount factor. In fact, his analysis proceeded quite differently. In considering the 13.6 ratio of the medium-sized companies, Dr. Bellemore discounted this figure by 55% and arrived at the 7.5 figure that he had previously determined was appropriate. (Tr. 385-88). The selection of an appropriate ratio would have been more persuasive if a fixed discount factor had been applied to price-earnings ratios of companies with sales comparable to New Haven's.

I do not doubt that Dr. Bellemore was warranted in predicting from the advent of the Simkins' management and a first-quarter profit (of whatever figure) that New Haven might see better days ahead. His testimony would certainly support a conclusion that at \$4.50 a share, New Haven might be an advantageous, if risky, purchase, though even that conclusion was not reached at the time by anyone else except the Simkins. But his testimony is not persuasive that the fair market value of New Haven shares at the date of the merger was in excess of the \$4.50 per share merger price.

Plaintiff's only other evidence to show a price per share in excess of \$4.50 were the figures concerning the acquisition of 149,371 shares of New Haven's stock by the Simkins in July, 1963. They purchased a major block of 112,321 shares at \$4.45 per share, plus a commission that

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brought the average price of the block to \$4.56 per share. In addition, they bought an additional 37,050 shares at an average price of \$4.88 per share. The average price for all of these shares was \$4.64 per share. These shares were purchased in an arm's length transaction from a group that previously had controlled the company. These purchases gave the Simkins ownership of approximately one-third of the outstanding shares plus the right to elect a majority of the board of directors.

Both sides claim these purchases support their positions. Plaintiff contends that an average selling price of \$4.64 per share in July, 1963, at a time when the company was losing money is evidence that a \$4.50 price is too low in January, 1964, when the unaudited first-quarter figures showed a profit. Defendants emphasize the \$4.45 price per share for the largest block of stock acquired in July, 1963. Moreover, they point out that this price includes a substantial premium for the degree of control the Simkins acquired by the 1963 purchase. On the issue of control, plaintiff concedes that control is worth a substantial premium, but contends that a factor for control should be added to price per share at the time of the challenged January, 1964, transaction to reflect the fact that the Simkins at that time acquired stock that gave them ownership of more than two-thirds of the outstanding shares.

Clearly elements of control were acquired by the Simkins both in 1963 and in 1964. In the circumstances of

this company and the status and distribution of its outstanding shares, it seems reasonable to conclude that the control acquired in 1964 was worth a considerably smaller premium than the value of the control that had previously been acquired in 1963. See Dasho v. Susquehanna Corp., 461 F.2d 11 (7th Cir. 1972); Vanadium Corporation of America v. Susquehanna Corp., 203 F.Supp. 686 (D. Del. 1962). In view of all the circumstances, a purchase at an average price of \$4.64 in July, 1963, which conveyed effective corporate control, followed by continuing losses for the balance of fiscal 1963 that were reversed only by a modest profit of disputed amount in the first month of the first quarter of Fiscal 1964, does not provide a basis for concluding that \$4.50 per share in January, 1964, was not a fair price.<sup>9/</sup>

Against the plaintiff's evidence,<sup>10/</sup> the defendants offered the testimony of their independent financial expert, Professor Pierson Hunt, of the Harvard Graduate School of Business Administration. He offered an analysis quite different from that of Dr. Bellemore. Professor Hunt acknowledged that he was not endeavoring to determine a precise market value for New Haven shares. Instead he sought to determine, by what he called a "discounting flows" analysis, whether the merger price of \$4.50 per share was too low.

Like Dr. Bellemore, Professor Hunt began by estimating the likely earnings of the company from the date of the merger (but without assuming that the merger occurred).



But Professor Hunt did not simply multiply the unaudited first-quarter earnings by three to estimate earnings for one year. Instead, he projected earnings well into the future based on predicted sales. Making what he termed optimistic assumptions, he estimated gradually increasing sales and calculated earnings by using percentages of earnings to sales drawn from tables reporting such percentages for companies in the industry with financial characteristics comparable to New Haven. He selected 1.07% for the first year. This was the percentage, in a ranking of percentages of companies in the industry, that marked the line between the third and fourth quartile of the companies analyzed. On assumed sales of \$21 million, he calculated first-year profits at \$224,700.<sup>11/</sup> Actually he used approximately half this figure in his subsequent analysis since almost half of the then current fiscal year had elapsed by the time of the merger. For the next five years thereafter, he assumed a 5% growth in sales and a percentage of earnings to sales that increased gradually each year until it reached the average for the industry of 2.67%. Applying these increasing percentages to the increasing sales, he computed earnings for six years and then assumed constant earnings thereafter into the future. He then adjusted for taxes to take into account the eventual using up of the company's tax loss.

At that point, Professor Hunt's analysis makes another significant departure from Dr. Bellemore's. Instead

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of capitalizing earnings for the first year, or even the average of several years, by a selected price-earnings ratio, Professor Hunt endeavored to compare the present value of the future anticipated earnings with the value of the investment represented by the number of shares outstanding prior to the merger priced at an assumed price per share of \$4.50. He determined from a standard table that the appropriate "discount value factor" that would relate the projected earnings (to be realized in both dividends and stock appreciation) to the assumed value of the investment in the outstanding shares was 25%. Considering this percentage as an index of "riskiness," he concluded that \$4.50 per share was certainly not too low, and if anything was perhaps too high, since the 25% factor was somewhat higher than alternative, less risky investment opportunities. In other words, he thought a reasonable investor would probably have balked at paying \$4.50 per share upon learning that 25% is the discount factor that relates the present value of projected earnings to his investment. The riskiness of realizing projected earnings equivalent to a discounted value factor of 25% would warrant an investment at a somewhat lower price (or at the same price in a less risky company) at which the risk of realizing the projected profits would be more acceptable.<sup>12/</sup>

This final stage of the analysis, while conceptually interesting, must frankly be recognized as involving a very subjective judgment. Having found that the discounted value

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of the projected earnings compared to value of the investment is high compared to most stocks, Professor Hunt then made the value judgment that, despite this high discount factor, the risks inherent in New Haven's situation made it an unattractive investment at \$4.50. It was his opinion that only at an even higher discount figure, such as 30%, would the risks of the New Haven situation justify an investment. Obviously, this higher rate could result from either increasing earnings in the computation or decreasing price below the assumed price of \$4.50. But the critical judgment is the one Professor Hunt made when he concluded that New Haven was too risky a company to justify an investment at a \$4.50 price per share.

Despite the subjective element in the analysis, Professor Hunt's testimony remains far more persuasive than Dr. Bellemore's. Because of the inappropriateness of a price-earnings ratio analysis and the glaring defects in the particular analysis made by Dr. Bellemore, his conclusion lacks persuasive weight. On the other hand, Professor Hunt's analysis provides a substantial basis for concluding that \$4.50 per share was not less than the price reasonably to be paid as the fair value for the investment opportunity represented by the New Haven shares issued in the merger. To the extent his conclusion involved a subjective evaluation, that evaluation was based on a careful consideration of the company's prospects, giving due weight to its past financial difficulties and its prospects for improved performance under capable management.

Defendants also offered the testimony of Leon Simkins, president of the company, and Attorney William Gumbart, a director. Both witnesses, in view of their roles with the company and their status as defendants in the case, have an obvious interest in the outcome. Even when their testimony is assessed with this consideration in mind, their testimony is extremely credible and persuasive. Simkins impresses as an honest and capable businessman. He considered the \$4.50 bid price on the over-the-counter market to be somewhat high and artificial in the absence of trading, but was reluctantly willing to accept it. Gumbart impresses as a wise and experienced observer of the company and of the state of the market for the company's shares. He testified that the alleged market at \$4.50 per share was high, that few shares could be sold, and that no investors were putting money into the company's stock at any price.

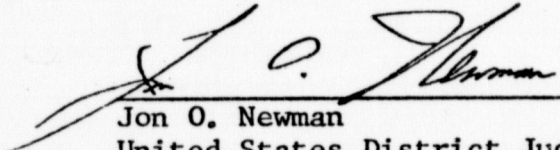
Neither side attempted to establish fair market value by any other measure than those already discussed. While plaintiff complains that defendants offered no evidence of what the fair market value was, their evidence was presented not to prove a precise fair market value but to show that the fair market value was not in excess of \$4.50. As can be seen, all of the evidence, while lengthy, is not entirely satisfactory. Nevertheless, assessing all of the evidence, this Court comes to the firm conclusion that even if defendants bear the burden of proof on the state claims,



the New Haven shares issued at the time of the merger did not have a fair market value in excess of the merger price of \$4.50 per share.

Since this conclusion defeats all of plaintiff's claims for damages and since the absence of any damages defeats both of plaintiff's causes of action, judgment will enter for the defendants denying all of plaintiff's claims for relief.

Dated at New Haven, Connecticut, this 8 day of January, 1974.

  
Jon O. Newman  
United States District Judge

FOOTNOTES

1/ Securities Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

2/ The figures derived from the company's annual reports are as follows:

	<u>1959</u>	<u>1960</u>	<u>1961</u>
net sales	\$18,588,063	\$24,634,543	\$21,596,039
net income (loss) before special items	(\$648,880)	(\$934,793)	(\$366,982)
	<u>1962</u>	<u>1963</u>	
net sales	\$21,331,590	\$20,819,048	
net income (loss) before special items	(\$81,032)	(\$582,865)	

3/ Plaintiff abandoned its claim that the proxy solicitation violated § 14 of the 1934 Act, because the solicitation was not subject to § 14 in February, 1964. Since New Haven's securities were trade over-the-counter, it was not subject to SEC proxy solicitation rules until the 1964 amendments to the 1934 Act, adopted August 20, 1964, took effect. 15 U.S.C. §§ 78 l(g)(1)(A), 78m, 78n.

4/ In view of the factual findings, infra, concerning the premise of plaintiff's claims for damage, it is unnecessary to decide whether, were any damages incurred, plaintiff would be entitled to collect not only the difference between value of assets received and value of shares issued,



but also the expected income from subsequent sale of the "excess" shares issued. See Smith v. Bolles, 132 U.S. 125 (1899); Levine v. Seilon, Inc., 439 F.2d 328 (2d Cir. 1971); Zeller v. Bogue Electric Mfg. Corp., 346 F.Supp. 651 (S.D. N.Y. 1972).

5/ Even if defendants have the burden of proving that \$4.50 per share was adequate consideration in order to discharge their burden of showing that the transaction was fair, it may be that plaintiff cannot recover any damages for the corporation unless he can satisfy the burden of proof usually assumed by plaintiffs to prove actual damage, i.e., proof that the shares actually were worth some price in excess of \$4.50 per share. Theoretically, at least, were the evidence evenly balanced (which it is not), defendants would have failed to show that the transaction was not voidable, but plaintiff, suing only for damages, would have failed to establish that the corporation is entitled to recover any specific amount of money.

6/ Plaintiff emphasizes the fact that New Haven's fiscal 1964 earnings turned out to be \$445,700, a figure plaintiff, with unconcealed enthusiasm, compares with Dr. Bellemore's projection of full year earnings of \$445,000. While conceding that full year earnings, known only after the merger, are not admissible to establish price per share at the time of the merger (plaintiff's brief after trial, p. 98), plaintiff does rely on the full year figure as "the most significant check of the reasonableness of Dr.

Bellemore's valuation" (plaintiff's reply brief after trial, p. 83). Apart from the fact that this near perfect coincidence equally supports an inference of after-the-fact rationalization, rather than before-the-fact projection, the important issue is not whether Dr. Bellemore made a good guess, but whether, upon the facts properly knowable at the time of the merger, a willing buyer would have parted with more than \$4.50 to purchase a share of New Haven's stock. Those responsible for corporate decisions are not guarantors of the future. They do not insure against corporate losses, nor are they automatically liable to disgorge post-merger profits. Of course, Dr. Bellemore's testimony is relevant to the issue of price per share in January, 1964, but if his analysis is insufficient to support a finding of price in excess of \$4.50, the defendants are not liable for damages simply because plaintiff's expert testified that he would have been able to predict the company's full year earnings.

7/ The transcript at line 7 of page 130 refers to the "manager's" statement, but the context indicates that counsel was referring to the "Medinger" statements.

8/ Plaintiff disputes the propriety of relying on any information that became available after January 16, 1964, the date New Haven's directors approved the merger ratio. The evidence known prior to that date sufficiently establishes that the fair market value for New Haven stock was not in excess of \$4.50. However, since the defendants are being sued for alleged derelictions in soliciting shareholder



approval for a merger at a ratio based on the \$4.50 price, there seems to be no reason why facts known at the time the proxies were solicited and the shareholder approval obtained are not relevant to a determination of the fairness of the merger price. Even if, for the sake of argument, the first-quarter report ought to have raised doubts in the minds of the directors that the ratio set in January, 1964, was appropriate, the information available to them prior to the proxy solicitation ought to have persuaded them to forego any possible doubts about the appropriateness of the ratio. The gravamen of their liability is not the setting of an unfair ratio but the obtaining of shareholder approval based on an unfair ratio.

9/ In addition to the July, 1963, purchase at an average price of \$4.64 per share, plaintiff also relies on a transaction in April, 1962, when the controlling group acquired the shares it later sold to the Simkins. The price per share for the April, 1962, transaction was \$6.00. There is little if any evidential weight to this earlier transaction. The company continued to experience heavy losses between the transactions. Moreover, the more recent July, 1963, transaction gives better evidence of what a willing buyer would pay in early 1964, taking into account the control acquired in 1963 and the continuing losses that followed the 1963 purchase.

10/ Plaintiff also contends, somewhat as an afterthought, that a price per share in excess of \$4.50 is established by adding to the over-the-counter bid price of \$4.50

"profits and assets" of \$2.05-1/2 per share, represented by certain assets and transactions that plaintiff alleges were not properly reflected in the materials sent to New Haven shareholders at the time of the merger (plaintiff's reply brief after trial, p. 86). The attempt fails for two reasons. First, there is no evidence that the over-the-counter bid price of \$4.50 per share represents real market value to which any other elements of value can be added. What evidence there is points to the conclusion that, apart from the Simkins, who wanted to acquire a majority position in the stock of a company they were already controlling and operating, there was no one else with any interest in purchasing New Haven shares at \$4.50. See Norte & Co. v. Huffines, supra, 288 F.Supp. at 859, rejecting market price as evidence of fair value in a thin market. Second, no claim was made that a price per share in excess of \$4.50 could be established by net asset values, plus whatever per share increment could be accepted from plaintiff's claim of undisclosed "profits and assets" of \$2.05-1/2 per share.

11/ While Professor Hunt was firmly of the view that a capitalization of earnings approach would be inappropriate based on a projection from the unaudited report of a single quarter, it is interesting to note that if Dr. Bellemore's capitalization ratio is applied to Professor Hunt's projection of first full year earnings, the resulting price per share is slightly below the merger price of \$4.50. Dr. Bellemore projected first-year earnings at \$445,700 and



arrived at a price per share of \$7.50 to which he added a 15% premium for control. Projected earnings of \$224,000, as estimated by Professor Hunt, would produce, with Dr. Bellemore's ratio, a price of \$3.77, to which a modest premium for the extra control beyond what the Simkins had already acquired would leave the total price below \$4.50. From the perspective of January, 1964, Professor Hunt's projection of first-year earnings is far more realistic than Dr. Bellemore's.

12/ At a lower price per share, the discount value factor would be a higher rate, but Professor Hunt's point was that at a sufficiently high rate, an investor would find it worth taking the risks inherent in a New Haven investment, compared to comparable investment opportunities.

APPENDIX T  
UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FILED

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U.S. DISTRICT COURT  
NEW HAVEN, CONN.

JEFF SIMON, AS CUSTODIAN FOR )  
GAIL NINA SIMON, UNDER THE )  
NEW YORK UNIFORM GIFTS TO )  
MINORS ACT )

vs. )

THE NEW HAVEN BOARD AND )  
CARTON COMPANY, INC., ET AL )

CIVIL NO. 10,425

J U D G M E N T

This cause having come on for trial before the Court, the Honorable Jon O. Newman, United States District Judge for the District of Connecticut, presiding, and the issues having been duly heard and the Court having rendered its Memorandum of Decision under date of January 8, 1974, denying all of plaintiff's claims for relief,

It is ORDERED and ADJUDGED that judgment be and is hereby entered in favor of the defendants, that this action be and is hereby dismissed on the merits, with costs to the defendants.

Dated at New Haven, Connecticut, this 9th day of January, 1974.

SYLVESTER A. MARKOWSKI  
CLERK, UNITED STATES DISTRICT COURT

By

*James J. Fung*  
Deputy In Charge